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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, ~~1958~~ 1960

No. ~~464~~ 9

JOHN FRANCIS NOTO, PETITIONER,

vs.

UNITED STATES

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

PETITION FOR CERTIORARI FILED JANUARY 23, 1959

CERTIORARI GRANTED OCTOBER 12, 1959.

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INDEX

	Original	Print
Record from the U.S.D.C. for the Western District of New York	a	1
Indictment	a	1
Motion to dismiss indictment	f	2
Order denying motion to dismiss indictment	k	3
Transcript of trial proceedings, March 27, 1956 and March 28, 1956	1	4
Appearances	1	4
Offers in Evidence	3	4
Testimony of John Lautner—direct	4	5
Offers in evidence and objections thereto	54	32
Transcript of trial proceedings, March 29, 1956	157	80
Testimony of John Lautner (resumed) direct	157	81
Offers in evidence and objections thereto	164	85
Motion for mistrial and denial thereof	289	144
Testimony of John Lautner—direct	290	144
Transcript of trial proceedings, April 3, 1956	296	148
Testimony of John Lautner (resumed) direct	296	148
Offers in evidence and objections thereto	306	154
Testimony of John Lautner—cross	386	196

Record from the U.S.D.C. for the Western District of New
York—Continued

	Original	Print
Transcript of trial proceedings, April 4, 1956	440	198
Testimony of John Lautner (resumed)—		
Cross	521	198
Redirect	545	202
Offer in evidence	549	203
Testimony of Allen Dietch—direct	567	206
Offers in evidence and objections thereto	575	211
Transcript of trial proceedings, April 5, 1956	617	228
Testimony of Allen Dietch (resumed)—		
Direct	617	228
Cross	634	238
Redirect	669	253
Testimony of Geraldine H. Hicks—direct	680	255
Offers in evidence	701	268
Testimony of Geraldine H. Hicks—cross	720	278
Testimony of Joseph A. Chatley—direct	751	286
Transcript of trial proceedings, April 6, 1956	782	303
Testimony of Joseph A. Chatley (resumed)—		
Direct	782	304
Cross	795	310
Testimony of Charles Regan—direct	852	325
Offers in evidence and objections thereto	859	329
Transcript of trial proceedings, April 9, 1956	921	363
Testimony of Charles Regan (resumed) direct	921	364
Offers in evidence	925	396
Testimony of Charles Regan—cross	934	371
Testimony of Jerome J. Fink—		
Direct	988	377
Cross	991	379
Testimony of Jerome J. Fink—		
Redirect	994	381
Recross	995	381
Testimony of Robert Greenberg—		
Direct	996	382
Cross	1019	396
Testimony of Florence Berkheimer—		
Direct	1037	396
Cross	1039	398
Redirect	1041	399
Testimony of John Muller—direct	1042	400
Offers in evidence and objections thereto	1043	401
Testimony of John Muller—		
Cross	1054	407
Redirect	1057	409
Recross	1058	409
Testimony of Arthur Girtell—direct	1059	410
Offer in evidence	1063	412
Motion of defendant for a dismissal of the indictment, etc. and denial thereof	1069	413

INDEX

iii

Record from the U.S.D.C. for the Western District of New York—Continued

	Original	Print
Transcript of trial proceedings, April 10, 1956	1110	414
Excerpts from certain Government's and defense exhibits	1110	414
Renewal of motion of defendant for dismissal of the indictment, etc. and denial thereof	1241	420
Transcript of trial proceedings, April 11, 1956	1243	420
Motion to reopen defendant's case and denial thereof	1243	420
Renewal of offer in evidence and denial thereof	1244	421
Defendant rests	1245	421
Charge of the court	1246	421
Requests and exceptions	1267	431
Motion to set aside verdict and for a new trial and denial thereof	1279	435
Sentence	1279	435
Judgment and commitment	1280a	436
Proceedings in U.S.C.A. for the Second Circuit	1281	438
Opinion, Ryan, J.	1281	438
Judgment	1296	451
Clerk's certificate (omitted in printing)	1298	
Order granting motion for leave to proceed in forma pauperis and granting petition for writ of certiorari	1299	452

[fol. a]

**IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF NEW YORK**

Criminal No. 6457-C

UNITED STATES OF AMERICA

VS.

JOHN FRANCIS NOTO

U.S.C., Title 18, Section 2385—Membership in an organization which teaches and advocates the overthrow of the Government by force and violence

INDICTMENT—filed November 8, 1954

The Grand Jury Charges:

(1) That during the entire period from in or about January, 1946, and continuously thereafter, up to and including the date of the filing of this indictment, the Communist Party of the United States of America has at all times been a society, group, and assembly of persons who teach and advocate the overthrow and destruction of the Government of the United States by force and violence as speedily as circumstances would permit;

(2) That from in or about January, 1946, and continuously thereafter, up to and including the date of the filing of this indictment, in the Western District of New York and elsewhere, John Francis Noto, the defendant herein, has been a member of said Communist Party of the United States of America, the defendant well knowing during all of said period that said Communist Party of the United States of America was and is a society, group, and assembly of persons who teach and advocate the overthrow and destruction of the Government of the United States by force and violence as speedily as circumstances would permit, and said defendant intending to bring about such overthrow by force and violence as speedily as circumstances would permit.

In violation of Section 2385, Title 18, United States Code.

A True Bill, ———, Foreman.

John O. Henderson, United States Attorney.

[fols. b-e] • [File endorsement omitted]

[fol. f] IN UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NEW YORK

Criminal No. 6457-C

[Title omitted]

MOTION TO DISMISS INDICTMENT—filed October 11, 1955

The defendant moves that the indictment herein be dismissed on the following grounds:

1. The indictment does not state facts sufficient to constitute an offense against the United States.

2. That portion of Sec. 2385 of Title 18 of the United States Code (Smith Act, 54 Stat. 67) upon which the indictment is based, to wit: Membership in the Communist Party of the United States of America, violates the First Amendment of the Constitution of the United States by abridging freedom of speech, freedom of the press and the right of peaceable assembly.

3. That portion of Sec. 2385 of Title 18 of the United States Code (Smith Act, 54 Stat. 67) upon which the indictment is based, to wit: Membership in the Communist Party of the United States of America, violates the Fifth Amendment of the Constitution of the United States by depriving the defendant of liberty or property without due process of law.

4. That portion of Sec. 2385 of Title 18 of the United States Code (Smith Act, 54 Stat. 67) upon which the indictment is based, to wit: Membership in the Communist Party of the United States of America, violates the Sixth Amendment of the Constitution of the United States by [fol. g-h] failing to properly inform the defendant of the nature and cause of the accusation against him.

5. The membership clause of the Smith Act has been repealed by implication by Sec. 4 (f) of the Internal Security Act (50 U.S. Code 783 (f)); and prosecution of the defendant for the offense charged in the indictment is barred by the later statutory enactment.

6 The indictment does not charge an offense within the applicable period of the Statute of Limitations.

Dated: October 10, 1955

/s/ Charles J. McDonough, Attorney for Defendant.
Office and P. O. Address, 930 Walbridge Bldg.,
Buffalo 2, New York.

To: John O. Henderson, Esq., United States Attorney,
Western District of New York, U. S. Court House, Buffalo,
New York.

[fol. i] [File endorsement omitted]

[fol. j] [File endorsement omitted]

[fol. k] IN UNITED STATES DISTRICT COURT WESTERN DIS-
TRICT OF NEW YORK

[Title omitted]

Criminal No. 6457-C

John O. Henderson, United States Attorney for the
Government

Charles J. McDonough, Buffalo, N. Y., Attorney for
Defendant

ORDER DENYING MOTION TO DISMISS INDICTMENT—November
10, 1955

Defendant's motion to dismiss the indictment, in ac-
cordance with notice of motion dated October 10, 1955, and
filed October 11, 1955, is denied.

So ordered.

Harold P. Burke, U. S. District Judge.

November 10, 1955.

[fols. 1-2] IN THE UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF NEW YORK.

No. 6457-C

UNITED STATES OF AMERICA,

VS.

JOHN FRANCIS NOTO, Defendant

Transcript of Trial Proceedings—March 27 and 28, 1956

Trial before Honorable Harold P. Burke, United States District Judge for the Western District of New York, and a jury at Buffalo, commencing March 27, 1956.

APPEARANCES:

Hon. John O. Henderson, United States Attorney, Western District of New York, appearing for the Government.

Charles McDonough, Esq., appearing for the Defendant.

[fol. 3] Mr. Henderson: Mark these for identification.

(Thereupon Income Tax Returns marked Government's Exhibits G-1 to G-6 for identification.)

OFFERS IN EVIDENCE

Mr. Henderson: I offer in evidence at this time Exhibits G-1 through G-6, being certified copies of the personal Income Tax Returns of the defendant John Noto for the years 1946 through 1951 inclusive. The purpose of the offer is to establish as recited in the documents that the defendant was an employee of the Communist Party and received compensation for his employee.

The Court: What years are they for?

Mr. Henderson: 1946 through 1951 inclusive.

Mr. McDonough: We have no objection.

(Thereupon Government's Exhibits G-1 through G-6, previously marked for identification, received in evidence.)

[fol. 4] JOHN LAUTNER, called as a witness by and in behalf of the Government, having been first duly sworn, testified as follows:

Direct examination.

Mr. Henderson: I want to advise you, you will have to speak up to the best of your ability here, because sometimes it becomes difficult to hear. I wish the jury, if there is any question about the ability to hear, they will indicate that.

Mr. McDonough: May I sit in this position, so I can get a better look at the witness?

The Court: Yes.

By Mr. Henderson:

Q. Mr. Lautner, what is your address?

A. My address is the Department of Justice Building, Room 3266, Washington, D. C.

Q. Where were you born?

A. In Hungary.

Q. What is the date of your birth?

A. January 1, 1902.

Q. When did you come to this country?

A. When I was about 16 months old, in 1903. Then I was [fol. 5] taken back at the age of 6 and came back in 1920 at the age of 18.

Q. Did there come a time when you became a citizen of this country?

A. Yes.

Q. When was that?

A. That was in 1926.

Q. Did there come a time when you became a member of the Communist Party of America?

A. Yes.

Q. When and where did that take place?

A. That took place in 1929 in New York City.

Q. How long did your membership continue?

A. My membership continued all the way up to the 17th of January, 1950, with the exception of the time I was in the Army.

Q. Are you presently a member of the Communist Party?

A. No.

Q. Do you know the defendant John Noto?

A. Yes.

Q. Do you recognize him as being in this court room?

A. Yes.

Q. Will you indicate the defendant John Noto in this court room?

A. Yes, he is sitting at that table over there, facing [fol. 6] the jury.

Q. Do you know what position the defendant John Noto occupied in the year of 1950 when you left the Communist Party?

A. Yes.

Q. What was his position?

A. He was sub-district organizer of Western New York, in the New York State Organization of the Party.

Q. At that time when you left were you a party functionary?

A. Yes.

Q. What position did you hold at that time?

A. At that time I was Chairman of the New York State Organization, review of the commission of the Communist Party, member of the National Commission.

Q. Were you familiar with the geographical area of which Mr. Noto was the district leader at the time you left the Party in 1950?

A. Approximately, yes.

(Thereupon numeric map of State of New York marked Government's Exhibit G-7 for identification.)

Q. I show you Government's Exhibit for identification G-7, which purports to be a numeric map of the State of New York, numeric except for the printed matter on it. Do you recognize that?

A. Yes, this is a map of New York State.

[fol. 7] Q. I hand you a red pencil, and ask you if you can outline the geographical area constituting sub-district of Western New York of the Communist Party, head of which in 1950 was the Defendant John Noto?

Mr. McDonough: I object to the terminology. First, he says "control," then he said "head of". I think he described him as District Organizer.

The Court: I sustain the objection.

Mr. McDonough: I think we should have accurate terminology.

Q. Mark the geographical marking, Western New York, sub-district of which Mr. Noto was Organizer in 1950.

A. Eastern boundaries was approximate (indicating).

Q. You have taken a pencil and outlined the geographical area, Western New York sub-district of the Communist Party in 1950?

A. That is correct.

The Court: Approximately.

The Witness: Eastern boundaries like Watertown.

The Court: It is not accurate, it is an approximation.

The Witness: Approximation as far as the eastern boundaries are concerned.

The Court: All right, generally speaking, it is the area [fol. 8] west of the line drawn through Watertown.

The Witness: Watertown and Utica and Binghamton at the southern tier.

Mr. McDonough: We have no objection.

(Thereupon Government's Exhibit G-7, previously marked for identification, received in evidence.)

Mr. Henderson: I would like to show this to the jury. I won't take too much time with it. The witness has outlined in red this area constituting the Western Sub-district of the Communist Party.

Q. Did that include Watertown, Syracuse, Utica, Binghamton, Rochester and Niagara Falls?

A. Yes.

Q. With respect to this membership in the Communist Party, do you recall what organization you were first assigned to as a Communist Party member, and when was that?

A. Yes, that was in November, 1929, in New York City proper. In a section called Yorkville, upper east side. I was assigned to a Party Unit at 350 East 81st Street.

[fol. 9] Q. Do you recall what your duties were as a member of that Yorkville Unit?

A. My duties at that time were to attend the Party meetings once a week, to listen and participate in the discussions in the Party, to accept assignments from the

Party Unit, to distribute the Daily Worker in the neighborhood, and go out to shop gate meetings. That were usually the chores of a Party member at that time.

Q. From time to time I will have to ask you to describe what the meanings are. What is a shop gate meeting?

A. Shop gate meeting—

Mr. McDonough: I object to that. I assume he is now testifying as an expert. I would like the United States Attorney to make his position clear before we get into definitions.

Mr. Henderson: At this time the testimony is he attended a certain type of meeting known as shop gate meetings. I would assume he knew what he is going to do.

The Court: If there is no objection I am not going to interrupt the trial.

Mr. McDonough: No objection.

[fol. 10] A. Our unit was specifically assigned to approve laundries in the territory, where Party members had to go out from time to time, to watch when the workers were coming out, and we had a speaker's stand and literature, and Daily Worker, and as they were coming out of their shop we would make speeches there and tried to make contact with the workers. That type of activity was known to us as shop gate meetings.

Q. Shop gate meetings. Did there come a time with respect to your membership in the Communist Party when you went to any Communist school?

A. Yes.

Q. Describe those to us, giving the time and place and nature of the school?

A. The first school I went to was in 1930, in April, May and June, it was a full-time school. It was held in New York City on Union Square, what was at that time known as the Communist Party Building. This school lasted three months. Later on I myself organized a number of schools.

Q. You say the school lasted three months. Will you state what the subject matter was taught at the school, and if you recall the names of some of the teachers?

A. Subject matters taught in that school was Leninism [fol. 11] taught by James Lustig.

Q. What was his capacity in the Communist Party at that time?

A. At that time he was an instructor in that school. He was one of the editors of a Communist daily newspaper published in the Party building. Later on he had other. Decisions of the Sixth World Congress Program of the Communist International, this was taught by a person by the name of John Szanto. He was also one of the editors of the Communist daily paper in New York at that time. Political economy was taught by a person known as J. Peters. Communist manifesto was taught by a person known as Dr. John Guetgai. History of the Russian Revolution was taught by a man known as Louis Toth or Weinstock.

Q. I do not wish to enlarge at this time on the schools beyond the initial school. Mr. Lautner, after you graduated from this first school you attended for three months, what, if anything, did you have to do as a functionary of the Communist Party of America?

A. I was assigned by the Communist Party to Detroit, Michigan, after graduation as District Secretary of a nationality group of the Communist Party in that city.

Q. What was a nationality group?

[fol. 12] A. This specific group was the Hungarian group. Communist Party had Party members in various nationality groups, and the Party in those groups was directed by the language department of the Communist Party at that time.

Q. What was your purpose?

A. My specific assignment was to build the Communist Party in the Hungarian community in Detroit, build circulation of the Party press in the community, to carry out decisions of the Party in that area and help develop revolutionary trade movement.

Q. You said you were district secretary. As such were you paid?

A. Yes.

Q. By whom?

A. By the Party, National Hungarian Bureau of the Party.

Q. That is a branch of the Central Communist Party of America?

A. That is correct.

Q. What is a Communist known as who is paid and puts his full time on the job?

A. He known as a full-time functionary provisional revolutionary.

Mr. McDonough: I object to that. Mr. Henderson said [fol. 13] he was not attempting to amplify, to go into this phase of the case. I object to the latter phase.

The Court: I sustain the objection. In the first place you have not shown by whom—we don't know whether he was known generally in the Party or some officers might have accepted it. I sustain the objection. Strike out the last part of the answer.

Q. In the Party is there a general terminology for a Party member who spends his full time in Party work and is paid for such services?

A. There is.

Q. What is that term?

A. That term is dedicated revolutionary, provisional revolutionary.

Q. How long a time did you function as full-time functionary or dedicated revolutionary?

A. Up to the time I left the Communist Party in January, 1950.

Q. During that period you spent all your time in Party work and were paid for it?

A. With the exception of the time I was in the Army, and in 1933 for a few months while I did not have a full-time [fol. 14] assignment, I had a district assignment in New York.

Q. You described your Communist duties in Detroit. What was your next job?

A. My next assignment was in Canada, Communist Party of Canada, and editor of a weekly Communist paper in Canada.

Q. There was then, at that time in 1931, a Communist Party of Canada?

A. I went to Canada in 1932, May.

Q. How long did you remain there?

A. About 11 months.

Q. Following the Canadian assignment what, if anything,

did you have to do with the functions of the Communist Party of America?

A. Yes, I was re-assigned in 1932, to Cleveland, Ohio, as one of the editors of a daily Communist paper in Cleveland, and then the secretary of the Hungarian National Bureau in Cleveland, Ohio.

Q. When did you leave Cleveland?

A. I left Cleveland at the beginning of—it was in the late summer of 1932.

Q. Where did you go and what did you continue to do with respect to the party activities?

A. I was assigned to the District Language Department [fol. 15] of the Communist Party in New York City on a non-full time basis, and then I was assigned full time in the fall of 1933 as Section Organizer of the Communist Party in New York of the upper west side.

Q. What is a Section Organizer within the meaning of the Communist Party term?

A. A Section Organizer is a Party functionary who is given personal responsibility and political leadership in a section organization of the Communist Party that encompasses a larger territory than a small community. A Section Organizer gives leadership and guidance to all Party members in that section. It develops the Party in membership, the Party organization in that section. The Party press carries out all the campaigns of the Party to the best of his ability in that section and also carries out concentration assignment if given to the organizer person.

Q. You said concentration assignment, is that a term used in Communist circles?

A. Yes.

Q. What is a concentration assignment with respect to the duties of a District Organizer?

A. A District Organizer—

Q. Section Organizer.

A. In that specific section or concentration tasks were, [fol. 16] one, to build a Party in the railroad yards on the west side of New York around 72nd Street, and to build a Party in the Armory on 69th Street and Columbus Avenue in the National Guard. I was responsible for those tasks.

Q. You say the National Guard?

A. That is correct.

Q. You mean military affairs?

A. I am speaking 1933, 1934, 1935, and parts of 1936. At that time those were my assignments, to build a Party among the National Guard on 69th Street and Columbus Avenue.

Q. When you say "build a Party", will you state—

The Court: Is there an Armory there?

The Witness: Yes.

The Court: Is there a National Guard Armory there at that location?

A. That is correct.

Q. Do I understand your task as District Section Organizer was to make contact with members of the New York State National Guard, and if so what was your technique of the approach?

Mr. McDonough: I object to this, as to his technique, presumably the technique of people may be different. I think [fol. 17] we have reached the point I must object to any further testimony antedating over ten years period of time covered by this indictment, testimony concerning which no attempt has been made by the District Attorney to connect the defendant John Noto. I object as prejudicial, incompetent, immaterial on the issues in this lawsuit.

The Court: You are asking what is technique is. I sustain the objection unless it appears it is a universal technique, and this was part of it.

Q. Was there a universal technique used by organizers in the Communist Party at the time you described?

A. Universal technique, we had instructions; first, we had a meeting—

Mr. McDonough: Just a moment. I object to what his instructions were, so that if your Honor rules otherwise; I won't have to be constantly interrupting, I object to the line of testimony of this witness concerning a period ten years antedating.

[fol. 18] The Court. As to the time element I overrule the objection, but this testimony only becomes acceptable in so far as it exemplifies a universal technique.

Q. Was there a universal technique established by the Communist Party in New York State as a result of training by its leaders of the section organizers?

A. Yes, there was.

Q. Will you state what training there was and where it took place?

A. In 1935 we were called an approved section organizer in New York, were called to—

The Court: Were you in 1933 organizing in upper New York? Now he is talking about instructions two years later.

Q. You stated you functioned as organizer with concentration assignment in the National Guard?

A. That is correct.

Q. Was there some established party technique laid down to you by the leaders prior to that assignment to enable you to function in the Party line?

A. I was called to a meeting in 1935—

Mr. McDonough: I object, not responsive, I think it calls for a "Yes" or "No" answer.

[fol. 19] The Court: I overrule the objection.

Mr. McDonough: May I ask the court before he testifies with regard to any technique as regards the National Guard for a preliminary examination on that point?

The Court: I deny the request.

Mr. McDonough: So that I will not have to interrupt I object to this line of questioning. (Question read.)

The Witness: Yes, there was.

Q. Will you state what that line was that was laid down?

A. We were called to a meeting, approved section organizers to Camp Unity in May, 1935.

The Court: You were talking about the organization which took place in the upper west side in New York in 1933—

The Witness: From 1933 to 1936—

The Court: Just one moment.

Q. How long were you section organizer in this section of New York?

A. 1933, September, up to 1936, April.

Q. When was it that you began to turn your attention to the affairs of the National Guard?

A. 1935, May.

[fol. 20] Q. Prior to that interest and activity in the National Guard, had you received instructions with respect to the—from the leadership of the Communist Party?

A. No.

Q. When did you go to this Camp Unity School?

A. It was a meeting in May, 1935.

Q. Did you continue your activities with respect to the National Guard to 1936?

A. April, that is correct.

Q. Before the termination of those activities, did you receive instructions with respect to the Party technique from the leadership of the Party in New York?

A. That is correct.

Q. Tell what those instructions were.

A. At this meeting we were told by the district leadership, specifically Max Steinberg and J. Peters, and the representative of the Communist National, known at that time by the name of Edwards, later on known as Gerhard Eisler. At this meeting—

Q. I don't know whether you described Max Steinberg, as to what his exact function was in the Communist Party.

A. At that time he was District Organizational Secretary of the New York City District of the Communist Party.

[fol. 21] Q. You mentioned one other name.

A. J. Peters.

Q. What was his duty?

A. He was functionary for the Center Committee of the Communist Party on a national level.

Q. Is he the man who is author of what is known as the Peters Manual?

A. Yes.

Q. Does he have another name?

A. Oh, yes, his real name is Joe Goldberg. He was also known for years as Stevens, Jackson Stevens, Steve and Joe Peters, Joe Peter—

Q. Those are all other names?

A. Yes.

Q. You said one of those men named Eisler had a connection with Communist International, what is that?

A. He was the representative of the Communist International in this country at that time, he was delegated cer-

tain powers to give guidance and leadership to the Communist Party in U.S.A.

Q. Tell us what this Communist International is?

A. Communist International was known as the general staff of the World Revolution.

Mr. McDonough: I object to what it was known as.

The Court: I sustain the objection.

[fol. 22] Mr. McDonough: I renew my objection, this man's opinion is not binding on this defendant.

The Court: I sustain the objection.

Mr. McDonough: I ask to strike it out.

The Court: Strike it out.

Q. Do you know as Party functionary what the Communist International was?

A. Yes.

Q. What was its function?

A. Yes. Communist International was the world leadership of the world wide Communist Movement to which leadership of the Communist Parties were affiliated to, including the Communist Party of the United States of America.

The Court: I don't know whether the objection goes to this, but I don't know whether this man's definition is the result of some private, or whether he acquired it from instruction from the Party. Until it appears he received his knowledge from instruction it is not admissible.

Mr. Henderson: I am going into great detail.

The Court: I do not object to the detail. I don't think [fol. 23] that is objectionable. The point is, it does not appear how he acquired this knowledge.

Q. With respect to the knowledge you claim you have on the functions, on the Communist International, upon what did you base that knowledge, whether you were trained or instructed?

A. Trained and instructed as to what role the Communist International plays as to leadership in the Communist Party of the United States of America.

Q. You attended various classes?

A. Classes and meetings.

Q. From that instruction you obtained an understanding of what a Communist International was?

A. That is right.

Q. Will you tell us what it was, the function?

Mr. McDonough: I object to this on the ground the witness is clearly being led into expert testimony. There is literature which the District Attorney had told the jury he intends to produce. I submit this witness is going into expert testimony. He has not been qualified. If the contention is that it is not expert, I submit it is necessarily [fol. 24] hearsay testimony.

The Court: He can give his knowledge whether it came from text books or otherwise.

Mr. McDonough: If it is offered as testimony I should have an opportunity to have a preliminary as to his qualifications.

The Court: I deny the request.

Mr. McDonough: Again, so that it will not be necessary for me to interrupt every question, may my objection stand to the entire line of questioning of this witness as an expert.

The Court: So understood.

Q. We were talking about an individual who attended a meeting. Collateral to that you mentioned this man Eisler had a function with the Communist International. You have now been given permission to state from your teaching and instruction and experience what that Communist International was.

A. Communist International was that top group, leadership group in the world wide Communist Movement that gave leadership and guidance to all Communist Parties including the United States Parties, sent delegates to [fol. 25] Congresses of the Communist International. Some of these delegates were elected into executive positions in the Communist International, like William C. Foster, Browder.

Q. That is the present head of the Communist Party of America?

A. I would not say that, Earl Browder, James Ford, Bob Minor, William Weinstein and others, others who were elected to high positions in the Communist International, and the Communist International checked from time to time

and gave guidance to all parties through delegated persons. Eisler was one of those delegates to the Communist International, and he came me with that delegated authority at that time, and he came to this particular meeting where he was introduced as a representative.

Q. What other delegates from other countries were active or members of the Communist International at the time Eisler was a member?

A. From here, what other members?

Q. I mean delegates to the Communist International?

A. In 1935 Browder and Foster were elected to the Executive Committee. Foster was a full member and Browder an alternate. Other Party leaders were elected as members, [fol. 26] as functionaries of the Communist International.

Q. Who was Browder?

A. Browder was the general secretary of the Communist Party.

Q. You mentioned a man William Foster?

A. He was Chairman of the Communist Party.

Q. National Chairman?

A. That is correct.

Q. What I want to ask you, this Communist International would seem to have an international flavor to it. Do you know what other countries of the world had activities in the Communist International?

A. Yes.

Q. Will you state who they were?

A. First and foremost—

The Court: I don't know whether this is objectionable. You are asking him, that might be his own personal opinion by virtue of private reading. If it is something he acquired officially by instructions, but if it is private opinion, it is not admissible.

Mr. Henderson: I understand, but I thought it might be [fol. 27] helpful to describe these things as they occur.

The Court: The point is counsel made an objection on the ground that he was not an expert.

Q. Getting back to this meeting at Camp Unity, where you describe Steinberg, Eisler and Peters, will you describe exactly what happened with reference to your affairs as Section Organizer?

A. We were told by Max Steinberg that a survey was made on the basis of the Party registration in 1934, how many Party members the New York District had in the National Guard. On the basis of that survey it was revealed in a number of armories where these guard members were drilling, there is an opportunity to build the Party in these armories. I was told specifically in the territory where I was Section Organizer, Columbus Avenue and 69th Street, there are a number of Party members who do not live in Section 18, I will be given the names of these people and I should organize a group of Party members from the outside who will cover drill nights when the boys comes out of the Armory, fraternize with these boys and if they are prospects so that in that way we can build a Party organization within the Armory. Other organizers were given specific [fol. 28] instructions as to their duties. That was Steinberg's report. Peters discussed the necessity of building the Party in a vital area where the cause of the Party will be a decisive one. Eisler at this meeting spoke of the importance not to neglect this type of activities and gave a lengthy report on what happened in Germany where the Communist Party neglected to build a Party organization into an organization known as Stolheimers.

Mr. McDonough: This is over my objection, not only incompetent but prejudicial to this defendant.

The Court: Objection overruled.

The Witness: And also why—

Q. Are you familiar with the German language enough to give us an interpretation?

A. It was a military organization in German, this was controlled—

The Court: We don't know whether this was discussed or whether he read it in a book.

Q. Confine your statements to what was said.

A. This organization, according to Eisler, was controlled by Hugenberg, and his organization became the backbone of Hitler's forces when he came into power. At this meeting Section Organizers were given present responsibility [fol. 29] to carry out this activity in other sections.

Q. This section organizer, the job you held from 1933 to 1936, just what geographical area did that cover?

A. That covered an area from 59th Street to 100th Street on the west side, from Central Park west all the way to the Hudson River.

Q. The members of the Communist Party who lived within that area was subject to the section organizer leadership?

A. That is correct.

Q. As far as a section that you outlined on Government's Exhibit G-7?

A. No, that is a sub-district.

Q. What is the difference between, in the ratio between a sub-district and a section?

A. Sub-district at that time was one step higher from the section.

Q. The leader of the sub-district was over the leader of the section organizers?

A. At that time.

Q. We have you working as a functionary in New York City up to 1936. Tell us what your next activity was?

A. My next assignment was as District Organizer of the Communist Party in the State of West Virginia.

[fol. 30] Q. Was that a job as District Organizer, similar to the sub-district organizer?

A. It was one step above sub-district.

Q. In Communist Party parlance there is a district and sub-districts and then sections?

A. At that time this particular sub-district was a district in itself in the early 30's.

Q. Which one. New York?

A. Upstate New York. It was a district of the Communist Party. It became a sub-district later on and remained so until the time I left the Party.

Q. Following your work in West Virginia what was your next job?

A. I was sent into the National Training School of the Communist Party in New York City, beginning of 1941. I was in West Virginia from 1936, April, up to the end of 1940.

Q. Then you went to the National Communist Party Training School?

A. Yes.

Q. Was that in New York City?

A. It was.

Q. What happened after you attended that school?

A. After that I was assigned to the Nationality Groups Commission of the Communist Party, as a member of [fol. 31] that Commission. In addition to that I was assigned as the National Secretary of the Hungarian Bureau of the Communist Party of the United States.

Q. How long did you function as Secretary of the National Hungarian Bureau?

A. I functioned in that capacity from June, 1941 up to November, 1942, and then again from June, 1945 up to the end of 1945.

Q. This National Hungarian Bureau, is that connected with the Communist Party?

A. That is right.

Q. It is a bureau of the Communist Party?

A. That is one of the nationality leadership of one of the nationality groups of the Communist Party.

Q. Following 1942 what occurred to you as a functionary of the Communist Party?

A. It occurred to me as an individual, I was drafted in the Army in November, 1942.

Q. What particular work did you get into, in the Army?

A. I was assigned to the War Department Military Intelligence Training School. I was graduated from the fifth class, then I was assigned to psychological warfare, sent overseas and spent 25 months in Africa and Italy.

Q. Did you continue your Communist affiliation during [fol. 32] this period?

A. No.

Q. How did that come about?

A. The Party made a decision all Party members in the Armed Forces are released from all Party activities, membership, inasmuch as they cannot fulfill membership as Party members, could not attend meetings.

Q. After your discharge what activities did you have as a Communist Party functionary?

A. I was re-assigned to the Nationality Groups Commission, and as National Secretary of the Hungarian National Bureau of the Communist Party.

Q. Where did you receive that assignment?

A. At the National Headquarters of the Communist Party in New York City.

Q. Where was this?

A. 35 East 12th Street, on the 9th floor.

Q. Do you know who the National Communist Party leader was in 1945?

A. At the time I came back it was still Browder.

Q. Earl Browder?

A. That is correct.

Q. Following this assignment as National Secretary of the Hungarian Bureau, what further assignment did you have?

[fol. 33] A. In 1946 I was assigned to organize into one organization all Party members in New York City who are eligible in the building trades section of the Communist Party, Party members who worked in the building trades craft, painters, plumbers, carpenters, electricians.

Q. Did you have some mechanical skill of your own?

A. Yes.

Q. What was your mechanical skill?

A. I am building trades. My father was a general contractor, and I have, still carry a card in the Bricklayer's Union.

Q. Did you have anything to do with the New York Waterfront as a Party functionary?

A. In 1947, February, for a few months I was assigned to the New York Waterfront in the process of organization and its concentration tasks. For a few months I was on the waterfront in preparation to organize a region there up to May, 1947.

Q. You already stated you attended the National Communist Party Training School in 1941?

A. That is correct.

Q. Did you learn anything there about the Party line establishing what concentration tasks would be?

Mr. McDonough: At this time, insasmuch as the United [fol. 34] States Attorney seems to be going into a new field, I would like to make clear again my objection on all the grounds previously stated of what this witness learned in 1941, five years before the beginning date of this indictment. I object to it as incompetent, irrelevant and

immaterial, I further object on the ground that the subjects which the District Attorney is questioning about is not a proper subject for expert testimony.

The Court: Objection so understood. Objection overruled.

Mr. Henderson: That last question I will withdraw at this time.

By Mr. Henderson:

Q. Following your activities as organizer for the Party on the New York Waterfront, what was your next duty?

A. I was appointed New York State Chairman of the Review Commission of the Communist Party.

Q. Who appointed you?

A. Bob Thompson.

Q. Who was he?

[fol. 35] A. He was the State Chairman of the Communist Party.

Q. New York State Chairman?

A. That is right.

Q. What is this New York State Review Commission of which you became head?

A. Review Commission is the disciplinary arm of the Communist Party. Its main function is to develop vigilance in the ranks of the Communist Party against possible infiltration of enemies of the Communist Party, to process and make decisions on disciplinary cases in the Party that were persisting in the lower organizations, to initiate disciplinary action in the Communist Party and to review and listen to hearings on appeal of disciplinary cases, and these were in the main the functions of the Review Commission in the New York State Organization.

Q. What was your next job when you finished as head of it?

Mr. McDonough: Does it appear when, may we have the date?

The Witness: In May, 1947. I functioned in this capacity from May, 1947 all the way to the time I left the Party in January, 1950. In addition to this function I was also as [fol. 36] signed to the National Review Commission of the Communist Party in September, 1948.

Q. What was your function as member of the National Review Commission?

A. Same as on a state level, except this was a National Review Commission.

Q. Who appointed you to that?

A. Annually elected, National Committee of the Communist Party that was elected at the 1948 convention, at the end of July, 1948.

Q. Who was National Chairman at that time?

A. William C. Foster, and the Secretary was Eugene Dennis.

Q. What was the function of the National Review Commission, generally was that the same task, function you already described for the state?

A. That is right.

Q. Were there any other members of the Commission?

A. Oh, yes.

Q. Who were they?

A. The Chairman was Alexander Trachtenberg, the other members were Louis Weinstock, George Morris, Constantine Radzi, Phil. Cabot, Margaret Krumbine, Dora Lipschitz and myself. These were the members of the National Review Commission.

[fol. 37]- Q. You remarked your function both as a member of the Review Commission of the New York State Communist Party and the National Review Commission had to do with discipline?

A. That is correct.

Q. Will you tell us just what the function was of both of these committees with respect to discipline within the Party? I think you also said it had to do with guarding against the enemies of the Party. Tell us what that phase of it was.

A. First, disciplinary cases were used and publicized in the Party as an example, what the Party considered as a violation of good conduct in the Party, those of the disruptive issues in the Party, whether they tried to particularize it or not, whether the issue was based on one principle, all these cases used to happen. Discipline in the ranks of the Party, and day to day tasks. This was the prime reason I say the disciplinary cases were to be left to be discussed in the ranks of the Party to tighten up the Party around the leadership. Disciplinary also demanded

in disciplinary cases, would uphold Party leadership against any accusations coming from below whether right or wrong, because it is part of the Democratic Centralism [fol. 38] in the Party. Later on steps were taken where an organizer was not a deserving fellow, he was removed, but a full Party leadership was one of the instructions I got at the time we were appointed to the National Review Commission.

Q. You used a term again which was apparently used in the Party work, which is Democratic Centralism. You said it was part of the principles of the Democratic Centralism. Tell us what that means according to the way the Communist Party used it.

Mr. McDonough: Inasmuch as the United States Attorney has gone over one subject to another, I think I should make clear that I object to these definitions. There are dictionaries and other means of proving, not a proper subject of the witness' testimony, the witness has not been qualified.

The Court: Objection overruled.

Mr. McDonough: Exception. I want to object again, if your Honor holds he is qualified to define terms, to let the record show a continuing objection.

The Court: Yes.

[fol. 39] Q. I asked you about this term "Democratic Centralism". Tell us the meaning of that term as used by the Communist Party.

A. Democratic Centralism is the method of functioning in the Communist Party, all decisions of the higher committee, are obligatory to all lower committees in the Party and members in the Committee to carry out, even if those decisions in the opinions of certain individuals are incorrect. They are bound to carry it out in order to have the unit of oneness, to act as one in the whole organization. That is in the essence Democratic Centralism. In addition to that the organization opens itself up once every two years for a discussion around a draft resolution which is issued by the National leadership. This is in preparation of conventions—

The Court: All we want is the definition of the term.

Q. You said in your last few statements National Review Commission also had to do with either security or defense against enemies?

A. Yes.

Q. Tell us what the function of the National Review Commission was in that capacity?

A. Always called the attention of the Party leadership to [fol. 40] be on guard against possible infiltration into the ranks of the Party, or elements who are enemies to the Party, and if they did, expose these elements and clean them out from the ranks of the Party.

Q. You said the National Review Commission had to do with discipline, discipline normally means some form of punishment. What were the forms of both state and national?

A. Expel members from the Communist Party or impose other type of disciplinary measures that the Review Commission found necessary to impose, but the extreme penalty would be expulsion from the Party.

Q. In connection with your affairs as a member of the Communist Party did you have any occasion to attend any meetings, national or state committee convention meetings?

A. Yes.

Q. Describe to the jury what conventions or meetings you attended?

A. I attended New York District committee meetings—

Q. First, I will ask you what is the National Communist Party Convention. When does it occur and who was there?

A. The National Convention occurs approximately once every two years, and delegates elected from various districts attend the National Convention.

[fol. 41] Q. What is the subject matter that the convention takes under consideration?

A. Review of the particular situation that exists at the particular time, from the point of view of the Communist Party, valuation of what the situation is, and on the basis of that judgment to pass a resolution that deals with that particular situation when the convention is held, and the next task ahead, to lay down a tactical line the Party will follow.

Q. To lay down a tactical line?

A. Yes.

Q. What about National Communist Party committee meetings, and when did those occur?

A. These occurred twice, or say twice a year, where a survey is made on the party activities, how was the tacti-

cal line carried out, under the membership of the National Committee, a valuation of the activities of the Party any Party leaders in that period, and getting themselves to the best of their abilities to carry out convention mandates following the National Committee meeting.

Q. Will you tell us what convention of the National Communist Party you attended?

A. I attended the 1936 National Convention, 1938, two conventions in 1940, in 1945, National Convention, and the [fol. 42] 1948 National Convention.

The Court: We will take a recess for ten minutes.

(Short recess taken.)

(After short recess.)

Q. You have told us in 1930 you attended what was known as the National Training School of the Communist Party. Will you tell us who assigned you to attend that school?

A. National Secretary of the Hungarian National Bureau, person by the name of Gus Majer.

Q. You said Hungarian National Bureau, do you mean Hungarian National Bureau of the Communist Party?

A. That is correct.

Q. What was the National Review Commission of the Communist Party at that time?

A. It was a sub-committee of the central committee of the Communist Party, under the supervision of the language department of the Communist Party carrying out Party decisions in that particular national group.

Q. There was a language difficulty so the people who could speak Hungarian were to carry on the Party line?

A. It was no language difficulty. It was more effective to carry out the Party line in nationality groups by these [fol. 43] Party leaders who knew the language well.

Q. Of course, you were fluent in Hungarian?

A. Yes.

Q. Where was that held?

A. That school was held in New York City, Union Square, what was at that time known as the Party Building.

Q. How many students attended the class?

A. About 20.

Q. Can you state what expenses were paid by the Communist Party?

A. All my expenses were paid by the Communist Party.

Q. Your living expenses while you were in attendance?

A. That is correct.

Q. How long did that school last?

A. That lasted up until the end of June in 1930.

Q. How many months?

A. We were in the school for about three months.

Q. Will you tell us what courses were taught in this school and who your instructors were in the particular course?

Mr. McDonough: 1930?

Mr. Henderson: Yes, National Training School.

Mr. McDonough: He has already told us that.

The Court: I am confused. There were two phases of this school, one in 1941.

[fol. 44] The Witness: That is correct.

The Court: Now you are talking about 1930?

The Witness: Yes, I testified about the 1930 school already.

Q. I think I will have you run it over, the courses you were taught.

A. The courses were political economy, Leninism decisions, 6th World Congress of the Communist International Program, of the Communist International, history of the Russian Revolution and history of the Communist International Paris, Communist Manifesto, and Communist Party problems and organizational problems, these were the subject matters.

Q. You referred to decisions of the 6th World Congress. What was the 6th World Congress with respect to the activities of the Communist Party?

A. The 6th World Congress of the Communist International was held in 1928, where they laid down the basic aims and objectives of the Communist International around a leadership of Stalin.

Q. This was one of the subject matters you studied in the New York State School?

A. That is correct.

Q. In connection with the course as you describe it on the Communist Manifesto—mark this.

[fol. 45] (Thereupon booklet, "Communist Manifesto" marked Government's Exhibit G-8 for identification.)

Q. I show you Government's Exhibit G-8 for identification, and ask you if you can identify that?

A. Yes.

Q. What is that?

A. This is a copy of the Communist Manifesto by Carl Marx and Friedrich Engels. This happens to be a copy printed by International Publishers, 11th printing, April, 1939, 100,000 copies.

Q. Is that the book which you identified which was used in the course as you testified under the title "Communist Manifesto"?

A. That is not the book. It is a copy of it.

Mr. Henderson: I offer that in evidence.

Mr. McDonough: To keep my position consistent and clear, I have objected, this was not the subject of expert testimony by reason of the availability of the literature. The Court has held otherwise. In view of that fact I must object to it on the ground if expert testimony is admissible under the established rules of evidence, documents or vol-[fol. 46] umes can be used only to cross-examine the expert, and not as primary evidence of the subject concerning which he is testifying to.

The Court: Objection overruled.

Mr. McDonough: Exception. I raise no question as to the authenticity or accuracy of the printed copy.

Mr. Henderson: That is received, your Honor?

The Court: Yes.

(Thereupon Government's Exhibit G-8, previously marked for identification, received in evidence.)

Q. Mr. Lautner, did there come a time in your career as Party functionary, when you taught classes?

A. Yes.

Q. What classes did you teach?

A. I taught section functionaries, trade union functionaries in the Party, who were members of the Communist

Party, branch organizers, these were the compositions of the classes in which I taught Marxism and Leninism.

Q. Did you use this Communist Manifesto, Government's Exhibit G-8 in the teaching you taught to the various units?

[fol. 47] A. Yes.

Mr. Henderson: With the Court's permission I would like to read a couple of short pages from the Communist Manifesto to the jury. Mr. McDonough, I will give you the original exhibit to follow.

Mr. McDonough: I have a copy, but I do not have it here.

Mr. Henderson: I will try to do that as often as I can. I have another copy I have prepared for reading. This page 8 is a separate page of the Communist Manifesto, entitled "Manifesto of the Communist Party, by Carl Marx and Friedrich Engels. A spectre is haunting Europe—the spectre of Communism. All the powers of old Europe have entered into a holy alliance to exorcise this spectre: Pope and Czar, Metternich and Guizot, French Radicals and German Police spies.

"Where is the Party in opposition that has not been [fol. 48] decried as Communistic by its opponents in power? Where the opposition that has not harled back the branding reproach of Communism, against the more advanced opposition parties, as well as against its reactionary adversaries?

"Two things result from this fact:

;"1. Communism is already acknowledged by all European powers to be itself a power.

"2. It is high time that Communists should openly, in the face of the whole world, publish their views, their aims, their tendencies, and meet this nursery tale of the spectre of Communism with a manifesto of the Party itself.

"To this end, Communists of various nationalities have assembled in London and sketched the following manifesto, to be published in the English, French, German, Italian, [fol. 49] Flemish and Danish languages."

I will read from page 44, the last paragraph:

"The Communists disdain to conceal their views and aims. They openly declare that their ends can be attained

nly by the forcible overthrow of all existing social conditions. Let the ruling class tremble at a Communist revolutionary. The Proletarians have nothing to lose, but their chains. They have a world to win."

Q. At the time you left the Party in 1950——

Mr. McDonough: Pardon. So we have our jurors clear, I assume at the proper time the Court will allow me to read any portion of this or any other document that I care to read to the jury.

The Court: The whole document is in evidence, and it may be read. The only question is when it should be done. The United States Attorney can read on his case any part that [fol. 50] he deems he would like to have the jury know. By reading any part of it if you think it distorts the meaning of anything that follows or previously, then at that time you can read. Otherwise you can read on your case.

Mr. McDonough: Inasmuch as it will be some time before I come to my case I do not think at this moment I am prepared to read anything. I think I should be allowed to read such portions as I choose. I can't point to anything immediately. I don't claim anything was taken out of the context. I do submit selective pages would distort——

The Court: I am not precluding you from reading. You should read it on your own case unless what he read distorts the meaning.

Mr. McDonough: Thank you, your Honor.

Q. I believe you testified you taught classes in this country of Communist members in 1946, 1947 and 1948?

A. I did not testify to that.

[fol. 51] Q. Did you?

A. I did.

Q. Did you use this book, portions of which I have read to the jury?

A. It was one of the many books we used in these classes.

Q. With respect to the course on the 6th World Congress given by Szanto, John Szanto?

A. That is correct.

Q. Was there a book used in that course as part of the teaching?

A. There were a number of books and pamphlets we used—

The Court: Just a moment. That is all he asked you.

Q. Did you use a book called "Program of the C.I."?

A. Yes, "Program of the Communist International".

Q. Will you state what, if anything, was taught in this course on American Exceptionalism?

Mr. McDonough: I object on the further ground we are back in 1930, 16 years before the defendant is charged. I object to what the witness learned or thought in 1930 as in any way binding on the defendant.

The Court: Objection overruled.

[fol. 52] Mr. McDonough: Exception.

The Witness: On American Exceptionalism, it was taught in this class at one time Carl Marx involves the possibility that there could be—

Mr. McDonough: If the Court please, I object to this witness stating what Carl Marx taught.

The Court: He did not say what Carl Marx taught. He said what was taught in this meeting.

Mr. McDonough: He referred to Carl Marx.

The Court: Yes, that was a teaching in this meeting.

Mr. McDonough: I did not understand it that way. I stand corrected. He is interpreting Carl Marx.

Q. In this course by John Szanto what was taught with respect to American Exceptionalism?

A. In this class it was taught that at one time Carl Marx involves the possibility of a peaceful transition into Socialism in possibly England and in the United States, but this possibility with the turn of the century where in both of these countries state machines were perfected, backed up [fol. 53] by military might and organizations, that the possibility of peaceful transition to Socialism did not exist any more. This view was the view of Lenin—

Mr. McDonough: I would like to be clear. Is he quoting Lenin?

The Court: I understand he is reciting the teaching in this school in 1931. Is that the fact?

Mr. Henderson: Yes, I asked him that, what was taught by John Szanto in this course. Read back to the witness the last sentence.

(Record read.)

The Witness: And also the view of Stalin that both England and the United States are no exception in the transition to Socialism from capitalism like any other countries, and they are subject to the same laws as the transition to Socialism in any other country.

Q. In this course by John Szanto, decisions of the World Congress, did you use any literature?

A. I already stated we used the Program of Communist International and also copies of the Inprecor. That is [fol. 54] International Press and Correspondence.

Mr. Henderson: Mark that for identification.

(Thereupon Booklet "Program of the Communist International" marked Government's Exhibit G-9 for identification.)

Q. I show you a booklet called Government's Exhibit G-9 for identification, and ask you if you can identify it?

A. This is the Program of the Communist International, third edition, February, 1936.

Q. Is that the book, that is a copy of the book that you used in this course and decision of the Sixth World Congress of John Szanto?

A. We used a copy of the Communist International, not this particular one, that contained the Program of the Communist International.

OFFERS IN EVIDENCE AND OBJECTIONS THERETO

Mr. Henderson: I offer that in evidence.

Mr. McDonough: I object to it on the ground there is no proof in this case this particular book was ever called to the attention of the defendant, or that it was any part of his instructions in the document of the Communist Party. I object on that ground and all further grounds.

[fol. 55] The Court: Knowledge and intent are elements that must be proved, also aims of the Communist Party. I take it the aims in 1931 were new, and those aims were

continued up to and including the period contained in the indictment. I shall receive it.

Mr. McDonough: Exception.

(Thereupon Government's Exhibit G-9, previously marked for identification, received in evidence.)

Q. I don't think I asked you just who was John Szanto as a Party functionary?

A. He was one of the editors of a daily Hungarian newspaper in New York known as the "New Forward".

Q. What other career did he have?

A. Later on he was Section Organizer in the Bronx and became National Treasurer of a union, and then in 1949 he left the United States.

Q. What was his nationality?

A. Hungarian.

Mr. Henderson: I would like now to read certain portions of this "Program of the Communist International". I will [fol. 56] read first at page 10, the second paragraph from the top. "Basing itself on the experience of the revolutionary labor movement on all continents and of all peoples, the Communist International, in its theoretical and practical work, stands wholly and unreservedly upon the ground of revolutionary Marxism and its further development, Leninism, which is nothing else by Marxism of the epoch of Imperialism and proletarian revolution."

I am dropping down to the last sentence: "Expressing the historical need for an International organization of revolutionary proletarians, the grave diggers of the Capitalist Order, the Communist International is the only International force that has for its program the dictatorship of the proletariat and Communism, and that openly comes out as the organizer of the International Proletarian Revolution."

I go to page 36, bottom of the page: "The conquest of [fol. 57] power by the proletariat is the violent overthrow of bourgeois power does not mean peacefully capturing the ready-made bourgeois state machinery by means of a parliamentary majority. The bourgeoisie resorts to every means of violence and terror to safeguard and strengthen its predatory property and its political domination. Like the feudal nobility of the past, the bourgeoisie cannot

abandon its historical position to the new class without a desperate and frantic struggle. Hence, the violence of the bourgeoisie can be suppressed only by the stern violence of the proletariat. The conquest of power by the proletariat is the violent overthrow of bourgeois power, the destruction of the capitalist state apparatus (bourgeois armies, police, bureaucratic hierarchy, the judiciary, parliaments, etc.), and substituting in its place new organs of proletarian power, to serve primarily as instruments for [fol. 58] the suppression of the exploiters."

Q. I will ask the witness now what is the proletariat?

The Court: He explained that yesterday, also the bourgeoisie at the same time.

Mr. Henderson: I read at page 39—

The Court: Just a moment. I was mistaken. You explained it in the opening.

Mr. Henderson: That is right. I did not think I brought it out.

The Court: If you want him to testify to it, it is all right.

Q. If you can, give us a description of the word "proletarian" as used in the Communist circles, will you do that?

A. Proletarian is one who is not an owner or any part of the means of production, factory, machinery, land, and the sources of raw material where raw materials are mined. He only has skill and knowledge to sell. A producer is a capitalist who owns means of production and sources of raw material and means of transportation and does not participate actively in the process of production, does not exert his labor power.

Mr. Henderson: I will read from page 52: "The mass awakening of Communist consciousness, the cause of social- [fol. 59] ism itself, calls for a mass change of human nature, which can be achieved only in the course of the practical movement, in revolution. Hence, revolution is not only necessary, because there is no other way of overthrowing the ruling class, but also because, only in the process of revolution is the overthrowing class able to purge itself of the dross of the old society and become capable of creating a new society."

Following on the next page, it would be your page 53. "One of the most important tasks of the cultural revolution affecting the wide masses is the task of systematically and unswervingly combating religion, the opium of the people. The proletarian government must withdraw all state support from the church, which is the agency of the former ruling class; it must prevent all church interference in state-organized educational affairs and ruthlessly suppress [fol. 60] the counter-revolutionary activity of the ecclesiastical organizations. At the same time, the proletarian state, while granting liberty of worship and abolishing the privileged position of the former dominant religion, carries on anti-religious propaganda with all the means at its command and reconstructs the whole of its educational work on the basis of scientific materialism."

I read again at page 54 and 55 on your copy: "The variety of conditions and ways by which the proletariat will achieve its dictatorship in the various countries may be divided schematically into three main types.

"Countries of highly developed capitalism, (this United States of America, Germany, Great Britain, etc.); having powerful productive forces, highly centralized production, with small scale production reduced to relative insignificance, and a long established bourgeois-democratic political system. In such countries the fundamental political demand of the program is direct transition to the dictatorship of the proletariat."

Page 66: "In the event of the imperialist states declaring war upon and attacking the U.S.S.R., the International proletariat must retaliate by organizing bold and determined mass action and struggling for the overthrow of the imperialist governments with the slogan of: Dictatorship of the Proletariat and Alliance with the U.S.S.R."

Q. What does the word "imperialistic status mean as it is used in the Communist Party?

A. Imperialistic state is the highest of state parties under capitalism.

Q. Was America considered as a imperialistic state during your tour as a Communist?

A. Yes.

Mr. Henderson: I am reading from page 76: "The fundamental tasks of Communist strategy and tactics the successful struggle of the Communist International for the [fol. 62] dictatorship of the proletariat presupposes the existence in every country of a compact Communist Party, hardened in the struggle, disciplined, centralized, closely linked up with the masses. The Party is the vanguard of the working class, and consists of the best, most class-conscious, most active and most courageous members of that class. It incorporates the whole body of experience of the proletarian struggle. Basing itself upon the revolutionary theory of Marxism and representing the general and lasting interest of the whole of the working class, the party personifies the unity of proletarian principles, of proletarian organization, bound by iron discipline and strict revolutionary rules of democratic centralism, which can be carried out thanks to the class consciousness of the proletarian vanguard, to its loyalty [fol. 63] to the revolution, its ability to maintain unbreakable ties with the proletarian masses and to its correct political leadership, which is constantly verified and clarified by the experiences of the masses themselves. In order that it may fulfill its historic mission of achieving the dictatorship of the proletariat, the Communist Party must first of all set itself and accomplish the following fundamental strategic aims:

Extend its influence over the majority of members of its own class, including working women and the working youth. To achieve this the Communist Party must secure predominant influence in the broad mass proletarian organizations (Soviets, trade unions, factory committees, co-operative societies, sport organizations, cultural organizations, etc.) It is particularly important for the purpose of winning over the majority of the proletariat, to gain control of the trade unions, which are genuine mass [fol. 64] working class organizations closely bound up with the everyday struggles of the working class. To work in reactionary trade unions and skilfully to gain control of them, to win the confidence of the broad masses of the industrially organized workers, to change and remove from their posts the reformist leaders, represent important tasks in the preparatory period.

"The achievement of the dictatorship of the proletariat presupposes also that the proletariat has acquired hegemony over wide sections of the toiling masses. To accomplish this the Communist Party must extend its influence over the masses of the urban and rural poor, over the lower strata of the intelligentsia and over the so-called 'little-man', i.e., the petty-bourgeois strata generally. It is particularly important that work be carried on for the purpose of extending the Party's influence over the [fol. 65] peasantry. The Communist Party must secure for itself the wholehearted support of that stratum of the rural population that stands closest to the proletariat, i.e., the agricultural laborers and the rural poor. To this end, the agricultural laborers must be organized in separate organizations; all possible support must be given them in their struggles against the rural bourgeoisie and strenuous work must be carried on among the small parcel farmers and small peasants. In regard to the middle strata of the peasantry in developed capitalist countries, the Communist Parties must conduct a policy to secure their neutrality. The fulfillment of all these tasks by the proletariat, the champion of the interest of the whole people and the leader of the broad masses in their struggle against the oppression of finance capital is an essential prerequisite for the victorious Communist Revolution."

Q. We ran upon another phrase "petty bourgeois", will [fol. 66] you tell us what that means?

A. Petty bourgeois is a small capitalist, who is a businessman, a farmer, who has his own means of production and has to take his wares to the market to sell them, but he is not necessarily a capitalist of intermediary elements between the proletariat and financing capitalists.

Q. On page 80 of your book: "In determining its lines of tactics, each Communist Party must take into account the concrete internal and external situation, the correlation of class forces, the degree of stability and strength of the bourgeoisie, the degree of preparedness of the proletariat, the position taken up by the various intermediary strata in its country, etc. The Party determines its slogans and methods of struggle in accordance with these circumstances, with the view to organizing and mobilizing

the masses on the broadest possible scale and on the highest possible level of this struggle.

When a revolutionary situation is developing, the Party advances certain transitional slogans and partial demands corresponding to the concrete situation, but these demands and slogans must be bent to the revolutionary aim of capturing power and of overthrowing bourgeois capital society. The Party must neither stand aloof from the daily needs and struggle of the working class nor confine its activities exclusively to them. The task of the Party is to utilize these minor every-day needs as a starting point from which to lead the working class to the revolutionary struggle for power. In the event of a revolutionary upsurge, if the ruling classes are disorganized, the masses are in a state of revolutionary ferment and the intermediary strata are inclining towards the proletariat, if the masses are ready for action and for sacrifice, the Party of the proletariat is confronted with the task of leading the masses to a direct attack upon the bourgeois state. This it does by carrying on propaganda in favor of increasingly radical transitional slogans (for Soviets, workers' control of industry, for peasant committees for the seizure of the big landed properties, for disarming the bourgeoisie and arming the proletariat, etc.), and by organizing mass action, upon which all branches of the Party agitation and propaganda, including parliamentary activity must be concentrated. This mass action includes, a combination of strikes and demonstrations, a combination of strikes and armed demonstrations and finally the [fol. 68] general strike conjointly with armed insurrection against the state power of the bourgeoisie. The latter form of struggle, which is the supreme form, must be conducted according to the rules of military science. It presupposes a plan of campaign, offensive fighting operations and unbounded devotion and heroism on the part of the proletariat. An absolutely essential prerequisite for this form of action is the organization of the broad masses into militant units, which by their very form, embrace and set into action the largest possible numbers of toilers (councils of workers' deputies, soldiers' councils, etc.), and intensified revolutionary work in the Army and the Navy."

Your page 84 and 85.

Mr. McDonough: Might I ask what edition that is?

Mr. Henderson: Yes.

Mr. McDonough: I want to make it clear where Mr. Henderson is reading is a different edition.

Mr. Henderson: I purpose was to allow Mr. McDonough to follow.

"The Communist International must devote itself especially to systematic preparation for the struggle against [fol. 69] the danger of imperialist wars. Ruthless exposure of social chavinism, of social imperialism and of pacifist phrasemongering intended to camouflage the imperialist plans of the bourgeoisie, propaganda in favor of the principal slogans of the Communist International, every day organizational work in connection with this, in the course of which work legal methods must unfailingly be combined with illegal methods, organized work in the Army and Navy, such must be the activities of the Communist Parties in this connection. The fundamental slogans of the Communist International in this connection must be the following, convert imperialist war into civil war, defeat your own imperialist government, defend the U.S.S.R. and the colonies by every possible means in the event of imperialist war against it. It is the bounden duty of all sections of the Communist International and of every one of its members to carry on propaganda for these slo- [fol. 70] gans, to expose the socialistic sophisms and the socialist camouflage of the League of Nations and constantly to keep to the front the experiences of the war of 1914-1918. In order that revolutionary work and revolutionary action may be co-ordinated, and in order that these activities may be guided most successfully, the International proletariat must be bound by International class discipline, for which, first of all, it is most important to have the strictest International discipline in the Communist ranks. The International Communist discipline must find expression in the subordination of the partial and local interests of the movement to which general and lasting interests and in the strict fulfillment by all members of the decisions passed by the leading bodies of the Communist International. Unlike the social-democratic, second International, each section of which submits to the [fol. 71] discipline of its own national bourgeoisie and

of its fatherland, the sections of the Communist International submit to only one discipline, viz., International proletarian discipline, which guarantees victory in the struggle of the world's workers for world proletarian dictatorship. Unlike the second International, which splits the trade unions, fights against colonial peoples and practices unity with the bourgeoisie, the Communist International is an organization that guards proletary unity in all countries and the unity of the toilers of all races and all peoples in their struggle against the yoke of imperialism. Despite the bloody terror of the bourgeoisie, the Communists fight with courage and devotion on all sectors of the International class front, in the firm conviction that the victory of the proletariat is inevitable and cannot be averted.

[fol. 72] "The Communist disdain to conceal their views and aims. They openly declare that their aims can be attained only by the forcible overthrow of all the existing social conditions. Let the ruling class tremble at a Communist Revolution. The proletarians have nothing to lose but their chains. They have a world to win. Workers of all countries, unite."

Mr. McDonough: I think it should appear that last paragraph is in quotes.

Mr. Henderson: That is an excerpt from the Communist Manifesto repeated in this book of 1936. The last quotation, your page 94, "The Communist Parties must be prepared for transition to illegal conditions. The ECCI must render the parties concerned assistants in their preparations for transition to illegal conditions".

Q. What is the ECCI?

A. Executive Committee of the Communist International, the abbreviation is ECCI.

Mr. Henderson: That is all the reading I have, if the [fol. 73] Court please.

The Court: We will recess until 2 o'clock.

(Whereupon a recess was taken until 2 o'clock P.M.)

[fol. 74] AFTER RECESS, 2 o'clock P.M.

APPEARANCES: Same as before noted.

JOHN LAUTNER, resumed the stand and testified further as follows:

Direct Examination (resumed).

By Mr. Henderson:

Q. Mr. Lautner, you testified, I have read from this Exhibit No. 9, called the Program of the Communist International, can you state whether or not this book was used during your membership either in the Party classes or the teachings done by yourself?

A. Yes.

Q. How long was it used in such a manner?

A. As late as 1948.

Q. You testified back in your Party school, I believe in 1930, you had a course entitled "History of the Russian Revolution and the C.I."?

A. That is correct.

Q. Who taught that class?

A. That class was taught by Louis Weinstock or Louis Toth.

Q. What was the course?

A. The course was the history of the Russian Revolution [fol. 75] and the history of the Communist International.

Q. Was there such a thing, known as conditions of affiliation to the International?

A. That is correct.

Q. That was taught in that course?

A. Yes.

Mr. Henderson: Mark this, please.

(Thereupon booklet marked Government's Exhibit G-10 for identification.)

Q. Mr. Lautner, in this course by Mr. Louis Weinstock, what was the substance of the course taught by him?

A. The substance of it was the relationship of the forces operating at the time, of the two Russian Revolutions, the February revolution and the October Revolution, and the role that the Communist Party of the Soviet Union played in that revolution, how it gave leadership and brought about successful establishment of the proletarian, also the Russian revolution bringing about the Communist International and the conditions under which the International was brought about, the anti-war positions taken by the so-called left elements in the socialist movement throughout the world at that time, and the conditions upon which one could affiliate with the newly organized Communist International. This was the substance matter.

[fol. 76] Q. I show you Government's Exhibit G-10, and ask you if you can identify that?

A. Yes.

Q. What is that?

A. This is "Selected Works, Volume 10," published by International Publishers, by B. I. Lenin. That deals with phases of this particular Party.

The Court: What is the title of that book?

The Witness: "Selected Works" by B. I. Lenin.

Q. In that book are there a series of conditions for affiliation with the Communist International?

A. Yes.

Q. This was the book used in this course taught by Louis Weinstock?

A. No, the conditions were taught, and the conditions appear in this book.

Q. These conditions outlined in Exhibit 10 were the same conditions you were studying under Louis Weinstock?

A. That is correct.

Mr. Henderson: I offer that book with respect to the portion describing the conditions.

The Court: So that I know what you are offering, you are offering all or that part?

Mr. Henderson: I offer the whole book.

Mr. McDonough: I need not renew my objection.

[fol. 77] The Court: The objection still stands. It seems to me the only material part we know by testimony up to date is the part that deals with conditions.

Mr. Henderson: The only reason I offer the book, if Mr. McDonough wants to read from it.

The Court: I will receive that part which deals with conditions. Apparently that must be designated.

Mr. Henderson: Pages 200 through 206.

Mr. McDonough: You are only offering pages 200 through 206?

Mr. Henderson: That is right.

The Court: I still haven't got the title.

Mr. Henderson: It is called "Selected Works" by B. I. Lenin.

(Thereupon Government's Exhibit G-10, previously marked for identification, received in evidence.)

Mr. Henderson: Ladies and gentlemen, I am reading from page 202, paragraph 3 of this book: "In all countries where has a consequence of the prevalence of a state of siege or of emergency laws the Communists are unable to carry on [fol. 78] all their work legally, it is absolutely necessary to combine legal with illegal work. In nearly all countries in Europe and America the class struggle is entering the stage of civil war. Under these circumstances the Communists can have no confidence in bourgeois legality. They must everywhere create a duplicate illegal apparatus which at the decisive moment could help the Party to perform its duty to the revolution.

"Persistent and systematic propaganda and agitation must be carried on among the Armed Forces, and Communist nuclei must be formed in every military unit. Mainly, the Communists will have to carry on this work illegally, but abstention from such work would be equivalent to betrayal of revolutionary duty, and would be incompatible with membership of the Third International", and condition 9, page 203, "Every party that desires to affiliate to [fol. 79] the Communist International must carry on systematic and persistent Communist Work in the trade unions, the cooperative societies and other mass workers' organizations. In the trade unions it is necessary to form Communist nuclei which by means of prolonged and persistent work must win the trade unions for the cause of Communism. These nuclei must at every step in their everyday work expose the treachery of the social patriots

and the vacillation of the Centre. These Communist nuclei must be entirely subordinated to the Party as a whole."

Q. Can you tell us what is meant by the word "Centre" in condition 9?

A. Centre means central leadership.

Mr. Henderson: Page 204: "Every party that wishes to affiliate to the Communist International must render selflessly devoted assistance to every Soviet republic in its struggle against counter revolutionary forces. The [fol. 80] Communist Parties must carry on persistent propaganda urging upon the workers to refuse to transport war materials for the enemies of the Soviet republics, and they must carry on legal or illegal propaganda among the Armed Forces that are sent to strangle the workers' republics, etc."

Q. I want to go back rather hastily, I think we have gone over this before, as to your Party positions from the beginning of your function as a Communist, with respect to the Detroit job you took over for the period in the spring of 1930, what job did you take?

A. Then the district secretary of the National Hungarian Bureau of the Communist Party, in addition to that for a few months I was also secretary of the Control Commission of the Detroit District.

Q. What were your duties with the Hungarian Bureau?

A. I already stated them.

Q. Run over it again.

A. To carry out decisions of the Party in that particular Hungarian community, to build the Party, to dispense the Marxist and Leninism understanding of the Party membership, and to build revolutionary trade union in Detroit, at [fol. 81] that time the Auto Workers Industrial Union.

Q. You mentioned you were with the Control Commission?

A. That is correct.

Q. What job did you hold with the Control Commission?

A. The Control Commission was the equivalent of the Review Commission later on, and it was known as the Review Commission, at that time it was known as the Control Commission. I was Secretary of that for a number of

months. It was to safeguard vigilance in the Party, listen to disciplinary cases, render decisions.

Q. You organized a training school in Canada?

A. That is correct.

Q. What were your duties there?

A. With the school?

Q. That is right.

A. To select students for that school, to provide for their transportation, their financial remunerations, and while in school preparing the curriculum for the school, get instructors for the school, house the school and the students and also teaching the school. This was my problem.

Q. This was a school devoted to Communistic teaching?

A. It was a Party school.

Q. What books and courses were studied?

[fol. 82] A. Same we used in the New York Training School in 1930.

Q. Do you have any recollection of any of the instructors?

A. Oh, yes, we had the District Organizer of the Communist Party from Buffalo, his name was Peter Shaunt. We also had Betty Gannett.

Q. Who was she?

A. At that time he was representative of the Y.C.I. in Canada. Later on she became Assistant National Organizational Secretary of the Communist Party of the United States.

Q. You mentioned Peter Shaunt?

A. Yes.

Q. He taught in the school?

A. Yes.

Q. What was the Buffalo District of the Communist Party at that time in 1931?

A. It was a separate district of the Communist Party. Just exactly what the number of the district was, I don't recall.

Q. Do you know what area it embraced?

A. Same geographical area as later on the sub-district encompassed.

Q. The then area of the District Organizer was the same as the area you designated controlled by the defendant, John Noto in 1950 when you left, is that right?

[fol. 83] A. That is right.

The Court: The whole area, Buffalo District?

The Witness: It was known as the Buffalo District of the Communist Party, and it was separate from the New York District, which was District 2.

Q. That area of Buffalo became known as what?

A. Sub-district of the Communist Party.

Q. How many districts were there in 1950?

A. I know of 26, or thereabouts.

The Court: National?

The Witness: National.

Q. How many were in New York?

A. Only one district that covered the whole state of New York.

Q. When you left the Party in 1950, you said there was only one district?

A. In New York State, of which Buffalo was a sub-district.

Q. How many sub-districts were there?

A. Two. One covered the tri-city area, Albany, Schenectady and Troy, and that part of the Eastern Sub-district of New York State, and the Western Sub-district, Buffalo, Rochester, Syracuse, Utica, Rome, Binghamton, Endicott, Johnson City, Jamestown, this was this sub-district:

[fol. 84] The same thing you have shown on Government's Exhibit 7?

A. That is correct.

Q. Moving to Cleveland I understand you had an assignment in Cleveland in 1932?

A. Yes.

Q. What was your job there?

A. I was the District Secretary of the Hungarian National Bureau, and one of the editors of the Hungarian Daily Communist Paper known as the "New Forward".

Q. When you say Hungarian National Party, you mean Communist Party?

A. That is correct.

Q. Are you referring to the newspaper as Communist paper?

A. That is correct.

Q. How long did you stay in Cleveland?

A. I stayed for about five or six months in Cleveland. In 1932, late in the summer, I left Cleveland, I went to New York.

Q. When you got to New York what duty was assigned to you as Party functionary?

A. I was placed on the district language department in New York City in September, 1933, became a Section Organizer.

Q. Who designated you as Section Organizer?

[fol. 85]. A. District leadership, Max Steinberg, Charley Krumbein.

Q. What were your functions as Section Organizer?

Mr. McDonough: I submit he has been all over this this morning, his assignment. We had considerable discussion about the Armory, waterfront and everything else. I submit this is repetitious, and I object to it.

Mr. Henderson: Just to have it run into the same kind of adhesive picture, I have only a little bit, it won't take very long. I don't think he testified to the functions of the Section Organizer.

The Court: Is it something new?

Mr. Henderson: I think it is.

Q. What are the functions of a Section Organizer?

A. Section Organizer is the political leader of the Party in a given section. He carries out all the Party campaigns in that section, he builds the Party in that section, he builds the Marxist-Leninist understanding of the membership in this section, builds organization of the Party in that section. Section Organizer carries out his concentration tasks in that section, attends meetings called by district leadership and gives leadership a given task to the Party [fol. 86] units. Generally, these are the functions of a Sectional Organizer.

Q. You were Sectional Organizer from 1933 to 1936?

A. Yes.

Q. Did you conduct any schools for members?

A. In this period, new members classes, yes.

Q. What books were used?

A. In these classes we urged students to build little libraries, we urged them to acquire or to get the little Lenin library editions of the classics.

Mr. McDonough: I object to this on the ground it does not come under the head of instruction. I submit, if the Court please, what this witness or anybody else may have urged students to do in New York City between 1933 and 1936 can have no probative value as far as this defendant Noto.

The Court: I have ruled on that time element and have given my reason. I overruled on that ground.

Mr. McDonough: The defendant has nothing to do with the Communist Party in any event.

The Court: Objection overruled.

Mr. McDonough: Exception.

[fol. 87] The Witness: But by more than pamphlets, and literature that was published at that time by the—such as Bittleman, "Milestones in the Cpusa", "Why Communism", M. Olgin, Peters Manual on Organization—

The Court: These are just recitals of things and not to be in evidence. If they are going to be in evidence, I suggest you introduce them.

Mr. McDonough: Did he give the name of that last answer and Soviet America and other books?

(Thereupon booklet marked Government's Exhibit G-11 for identification.)

Q. I show you Government's Exhibit G-11 for identification, and ask you if you can identify it?

A. Yes, this is "Why Communism" by M. J. Olgin. This is the copy of the second revised edition, May, 1935.

Q. Is the text of that book what you used in your classes for new members 1933 to 1936?

A. That is correct.

Mr. Henderson: I offer that in evidence.

Mr. McDonough: As your Honor knows—I withdraw [fol. 88] that statement—my objection is only on the previous grounds. I do not question the authenticity or legitimacy of the volume offered.

The Court: Objection overruled.

(Thereupon Government's Exhibit G-11, previously marked for identification, received in evidence.)

Mr. McDonough: May it appear the copyright is dated 1935?

The Court: Yes, he said it was revised. 1935.

Mr. McDonough: What I started to say, Exhibit 10, I hope that the record will show when it was originally written.

Mr. Henderson: I would like to read at page 58 of this Exhibit 11: "A time comes where there is demoralization above, a growing revolt below, the morale of the Army is also undermined. The old structure of society is tottering. There are actual insurrections. The Army wavers. Panic seizes the rulers. A general uprising begins. Workers stop work, many of them seize arms by attacking arsenals. Many had armed themselves before as the struggles [fol. 89] sharpened. Street fights become frequent. Under the leadership of the Communist Party, the workers organize revolutionary committees to be in command of the uprising. There are battles in the principal cities. Barricades are built and defended. The workers' fighting has a decisive influence with the soldiers. Army units begin to join the revolutionary fighters, there is fraternization between the workers and the soldiers, the workers and the marines. The movement among the soldiers and marines spreads. Capitalism is losing its strongest weapon, the Army. The police as a rule continue fighting, but they assume silence and made to flee by the United Revolutionary Forces of workers and soldiers. The revolution is victorious".

"Can a revolution be one? Capitalism creates a situation where large masses of the people are dissatisfied, embittered, emboldened by intolerable hardships. Capitalism itself prepares the conditions for its cataclysm. If, under conditions of a severe capitalist crisis, the majority of the working class is ready to wage a determined armed fight for the overflow of the capitalist system, then the revolution may be victorious, providing there is in existence a mass Communist Party recognized by the workers as their leader in struggles against capitalism. A standard reformist argument against the revolution is 'The weapons of warfare are so strong in our days that the workers have

no chance of winning in open conflict.' The wish is farther to the thought of the reformists in this respect. Because they hate a revolution of the workers, they maintain that a revolution cannot win. What is true is that a revolution cannot win unless the Armed Forces, or at least part of them join the workers. But once they join the workers, [fol. 91] the workers not only have rifles and cannon, but also airships and poison gas and battleships to fight the bosses. Poison gases are destructive to be sure, but their destructive power can be turned also against the old system. There is no reason why the workers should not use them against the enemy when the final conflict has arrived. In all revolutions throughout history the Armed Forces of the old system were at the beginning stronger than the Armed Forces of the revolutionists."

Q. You mentioned, Mr. Lautner, a book called "Peter's Manual" used in the school run by you in 1933, is that correct?

A. That is correct.

Q. I show you a document—let me mark it.

(Thereupon photostatic copy of pamphlet marked Government's Exhibit G-12 for identification.)

Q. Can you identify Government's exhibit G-12?

A. Yes.

Q. What is that?

[fol. 92] A. This is a copy called "The Communist Party, a Manual on Organization," by J. Peters.

Q. Is that J. Peters the same fellow that you named earlier this morning as using other names?

A. Yes.

Q. One of which was Goldberg?

A. That is correct.

Mr. Henderson: I offer this in evidence.

Mr. McDonough: I note that the page on which the copy-right date would ordinarily appear, half of it is torn out. I object to it unless we have some way of finding out when this was written.

Mr. Henderson: Do you want to see it?

The Court: No, I don't want to see it. You are asking him about the school in 1931.

Mr. Henderson: 1933 to 1936.

The Court: Can you tell us what you know about these manuals?

The Witness: It was published in 1935 and distributed in the Party information section.

The Court: It was not used until 1935?

The Witness: That is right, it would not be, it was not published.

[fol. 93] Q. It was used in your school as Section Organizer in 1935?

A. That is right, 1935 and 1936.

Mr. Henderson: I offer it in evidence.

Mr. McDonough: I object on the same grounds previously stated with respect to all documents so far offered.

The Court: Objection overruled.

(Thereupon Government's Exhibit G-12, previously marked for identification, received in evidence.)

Q. Up to the time you left the Party sometime in 1950, had this book, Government's Exhibit G-12, ever been repudiated by the Party?

Mr. McDonough: I object to that.

The Court: I sustain the objection.

Q. Do you know whether it was?

A. It might be a conclusion whether he knew.

Q. Was it used up to the year 1950 by Party functionaries?

A. It was available to Party functionaries, that is correct.

The Court: It may be available; even though it was repudiated.

The Witness: It was not repudiated.

The Court: Was it used?

[fol. 94] Mr. McDonough: I understood the Court to sustain my objection.

The Court: I sustain the objection.

Mr. McDonough: May that be stricken?

The Court: Strike it out.

Q. Was the book, "Peter's Manual" used by Party functionaries, reference made to it from time to time in Party affairs?

A. Not to my knowledge.

Q. It was used to 1936?

A. Up to 1936, and in one instance in 1949 the author of that book asked me for a copy of it. I brought it to him, and he made a remark "It fits like a glove".

Mr. McDonough: I object to that and move to strike it out.

The Court: Strike it out.

Q. What was the author's capacity?

A. He was incognito, he was underground.

Q. What was his last position before he went underground?

Mr. McDonough: Just a moment, I object, not binding on my client. I object, as prejudicial, no bearing on my client.

The Court: I sustain the objection. An individual makes [fol. 95] some comment about a book, that does not make it an official attack of the book.

Mr. Henderson: I would like to read certain pages bearing on the Party line established in the school up to 1936, with the Court's permission, I will read this manual. In this particular case, I would like to substitute this photostatic copy of this Government's Exhibit G-12 instead of the original.

Mr. McDonough: I have no objection to that, without waiving—

(Thereupon photostatic copy substituted for original of Government's Exhibit G-12.)

Mr. Henderson: I would like to read page 3. This under the *total* "Preface."

"This organizational manual fills a long-felt need. It will be welcomed by many thousands of active Party members who have looked forward to its publication for a long time. Much of the material used by Comrade Peters as the basis for this manual was, it is true, available, [fol. 96] but it is scattered in many documents over a period of years. Much of the material was of late available, as for example, the famous and thorough going resolutions and decision on the question of organization adopted by the Second Organization Conference of the Communist Inter-

national, which was printed in the *Inprecor* some ten years ago.

"Comrade Peters has added much to the existing material both from more recent International experience and especially from the recent experience of our own Party, experience that is very rich and valuable. The manual embodies, therefore, the best that is available in the theory and practice of organization in our own Party and the Communist International. Comrade Peters not only is thoroughly acquainted with the fundamental principles of Leninist organization, but has had a wide varied [fol. 97] experience in organizational work over a period of many years. It is this combination of theory and practice permeating the manual that makes it so valuable to our party. I am sure that when this manual becomes popularized in the Party, we will wonder how we could have gotten along without such a weapon for so long."

Q. That is signed by Jack Stachel, who was he?

Mr. McDonough: What page?

Mr. Henderson: Page 7, 6 and 7. I will ask him about that later.

"It is unnecessary in this introduction to mention all the important questions treated in the manual. This can be seen from a glance at the index. Suffice it to say that it deals with all the vital questions of Party organization. Let us mention just two more types of questions dealt with. First, the opening sections which explain in a very elementary and detailed manner the Party itself. What is the Communist Party, what is its role in relation to the other [fol. 98] organizations of the workers, what is its fundamental policy, what are the main tactics of the Party, etc. It is a fact that many of our Party members have not yet become fully acquainted with many of these questions. The second type of questions dealt with that should be mentioned, we are sure will be most welcome to the comrades charged with the various duties in the shop and street nuclei. What is the task of the various functionaries? How often have we faced the question that a comrade is assigned a post, let us say unit organizer agitprop director of the unit, Daily Worker Agent of the unit, and the comrade receives no records of the comrades who

preceded him in the past, no guidance as to his or her tasks. Finally, I wish to call attention to the section dealing with the structure of the Party from top to bottom, illustrated by a number of charts, which will give the comrades [fol. 99] an appreciation of the whole of the machinery of the Party, their relation to it, the understanding of their special task in relation to the whole Party.

"Naturally, the manual will not by itself solve our problems. Nor will it bring the best results if it will be conceived of as a blue-print to be applied mechanically. It will be most effective if it is properly understood as a guide to the daily practical problems. In this respect it is necessary not only that we ensure every Party member securing a copy of the manual and reading it—and especially every comrade holding a post of responsibility from the units up—we must organized the collective study of the manual in the units, among the various functionaries in the units, sections and districts."

Mr. Henderson: This is page 8. "The Communist Party, a manual on organization. Fundamentals of the Party [fol. 100] program. The Communist Party is the organized vanguard of the working class, composed of the most class-conscious, the most courageous, the most self-sacrificing section of the proletariat. The Communist Party does not stand above, but is part and parcel of the working class. It is the general staff of the proletariat.

"The Communist Party is armed with the teachings of Marx, Engels, Lenin and Stalin. These teachings are a powerful weapon in the hands of the Communist Party. They enable the Party to direct the struggles of the working class along the correct line, and to gain victories while avoiding unnecessary sacrifice. These teaching enable the Party to know which forces are acting in the interests of the working class and which against it. By means of these teachings the Communist Party is able to find the best methods of struggle of the working class against capitalism and for socialism. [fol. 101]

"The role and aim of the Communist Party.

"As the leader and the organizer of the proletariat the Communist Party of the U.S.A. heads the working class in the fight for the revolutionary overthrow of capitalism, for the establishment of the dictatorship of the proletariat, for

the establishment of a Socialist Soviet Republic in the United States, for the complete abolition of classes, for the establishment of socialism, the first stage the classless Communist Society.

"Our Party realizes that certain conditions must exist before the outworn capitalist system can be overthrown.

"What are the conditions? Comrade Lenin, in his pamphlet 'Left Wing' Communism, and Infantile Disorder, answers this question.

"For revolution it is essential, first, that a majority of the [fol. 102] workers (or at least a majority of the class conscious, thinking, politically active workers) should fully understand the necessity for revolutionary and be ready to sacrifice their lives for it, secondly, that the ruling classes be in a state of governmental crisis which draws even the most backward masses into politics, weakens the government and makes it possible for the revolutionaries to overthrow it rapidly. (Little Lenin Library, Vol. 20, Page 65.)"

Page 10. "How will the Communist Party convince the majority of the working class that a revolution is necessary? The Communist Party can do this by becoming the trusted vanguard, the beloved organizer and leader of the struggle of the working class. Agitation and propaganda alone are insufficient. Something more is needed to convince the masses of the proletariat of the necessity for the overthrow of the old order."

[fol. 103] Page 14, under the title "The Allies of the Proletariat."

"The chief strategic aim of our Party in the present period is to win the majority of the working class for the struggle against capitalism. This is an essential condition for victory over the bourgeoisie and for preparing the workers for the decisive battles for the dictatorship of the proletariat.

"The revolutionary overthrow of the capitalist system is the historic mission of the working class. But the workers cannot fulfill their mission if they fail to win over the wide sections of the toiling masses. It is essential that the proletariat wins to its cause all its allies, without whom there cannot be a successful revolution."

Page 26. "Party discussion and freedom of criticism."

"The free discussion on questions of Party policy in in-

[fol. 104] individual Party organization or in the Party as a whole, is the fundamental right of every Party member as a principal point of Party democracy. Only on the basis of internal Party democracy is it possible to develop Bolshevik self-criticism and to strengthen Party discipline, which must be conscious and not mechanical. There is complete freedom of discussion in the Party until a majority decision has been made by the unit or the leading committee, after which discussion must cease and the decision be carried out by every organization and individual member of the Party.

"It is clear, however, that basic principles and decisions such, as for example, the program of the Communist International, cannot be questioned in the Party.

"We cannot imagine a discussion, for example, questioning the correctness of the leading role of the proletariat in [fol. 105] the revolution, or the necessity for the proletarian dictatorship. We do not question the theory of the necessity for the forceful overthrow of capitalism. We do not question the correctness of the revolutionary theory of the class struggle laid down by Marx, Engels, Lenin and Stalin. We do not question the counter revolutionary nature of Trotskyism.

"We do not question the political correctness of the decisions, resolutions, etc., of the Executive Committee of the C.I., of the convention of the Party, or of the central committee after they are ratified."

On Page 27: "Party discipline is based upon the class consciousness of its members, upon the conviction that without the minority accepting and carrying out the decisions of the majority, without the subordination of the lower Party organizations to the higher committees, there can be [fol. 106] no strong, solid, steeled Party able to head the proletariat. This discipline is based upon the acceptance of the C.I. and the Party program, and in the confidence of the membership in the Communist International and in the Central Committee.

"There can be no discipline in the Party if there is no conscious and voluntary submission on the basis of a thorough understanding of the decisions of the Party. 'Only conscious discipline can be truly iron discipline' (Stalin)."

Page 28: "Why do the Communists attach so much importance to discipline.

"Because without discipline there is no unity of will, no unity in action. Our Party is the organized and most advanced section of the working class. The Party is the vanguard of the proletariat in the class war. In this class war there is the capitalist class with its henchmen and helpers, [fol. 107] the reformist leaders, on one side, and the working class and its allies on the other. The class war is bitter. The enemy is powerful, it has all the means of deceit and suppression (armed forces, militia, police, courts, movies, radio, press, schools, churches etc.) In order to combat and defeat this powerful enemy the army of the proletariat must have a highly skilled, trained General Staff (the Communist Party), which is united in action and has one will. How can an army fight against the army of the enemy if every soldier in the army is allowed to question and even disobey order of his superior officers? What would happen in a way if, for example, the General Staff orders an attack, and one section of the army decides to obey and go into battle, another things that it is wrong to attack the enemy at this time and stays away from the battle, and a third section decides to quit the trenches and retreat to another. [fol. 108] position instead of going forward."

Page 47: "What are the basic industries?

"The Party should concentrate all its forces and energies to build shop units, first of all in the basic industries.

"Basic industries are those upon which the whole economic system depends. They include:

"1. Those which produce material for production, like steel, mining, oil, chemicals.

"2. Those which deliver material to the place of production or consumption, like railroad, trucking, marine, etc.

"3. Those which produce power for running the wheels of industry, electric power plants, steam and hydro-electric plants, etc.

"It is also important to concentrate all our energy to build the Party in the auto, textile and packing house [fol. 109] industries, because of their strategic importance in the economic system. Strong Party organizations (shop units) in these basic industries with a mass following could really influence and lead the millions of workers en-

gaged in these as well as in all lesser industries in their daily struggles and deliver decisive blows to capitalism.

"While it is of the utmost importance to concentrate all energy of the Party to build and strengthen the units in the basic industries, the other industries cannot be neglected. The Party systematically builds units in light industries (clothing, shoe and leather, etc. in offices, stores, laundries, hotels and restaurants, etc.)."

Page 78: The Daily Worker, the main-instrument of the units for reaching the masses.

"One of the main and most important instruments of [fol. 110] agitation and propaganda in the hands of the Party units is the Daily Worker, the central organ of our Party. Those comrades who can influence the masses, who can win over the workers in one factory or a certain territory, have no chance of speaking personally and daily to the workers in thousands of factories, thousands of cities, thousands of streets. And even if these comrades do talk to the workers in a certain factory occasionally, they can deal with only one or two of the most burning questions. But the Daily Worker, the collective agitator and organizer of our Party and of the masses, speaks to its readers every day."

"The last leaders of our Party speak to the workers through articles in the Daily Worker. The Central Committee speaks to the workers through editorials. Comrades in the unions, worker correspondents from the factories and towns, tell the stories of their fight against capitalism. [fol. 111] If we hand the Daily Worker to a worker, we get him in daily touch with the leadership of our Party, with the Central Committee, with the best, most experienced Communists. Is there any better instrument than the Daily Worker for reaching and winning the masses? No, there is not. Therefore, selling the Daily Worker in the neighborhood, and at the factory gates, getting subscribers and worker correspondents for it, is one of the most important duties of the Party organization."

Page 81: "The Party has made and is making available the most important works of Marx, Engels, Lenin and Stalin in low priced editions. There can be no sound revolutionary movement built without the distribution of this literature. This is why the importance of literature distribution is stressed so much by the Party."

[fol. 112] Page 98—move to 101—excuse me, 108, under the title "Transfers".

"If a member of the Party moves from one place to another, he must secure a transfer from the Party organization before he moves. No Party member has the right to leave his unit without permission. The units must not accept any member without a transfer. A transfer card must be secured from the Section Committee in order to transfer from one unit to another in the same section, from one section to another in the same district, the transfer is issued by the District Committee, from one district to another, the Central Committee issues the transfer, from the Communist Party of the U.S.A. to a Communist Party in another country, the Central Committee issues the transfer.

"Leaves of absence. The members of the Party can secure permission for a leave of absence in case of sickness [fol. 113] or necessity for travel from the Party unit or committees. If a member leaves the Party unit without permission, his case will be handled in a disciplinary way.

"Forces—Cadres."

"One of the main conditions for developing the initiative of the units is the systematic development of forces, cadres, leadership. We must realize that without good leadership in the units and sections the Party cannot function properly. We must have in each unit of our Party a core of comrades who are politically developed, capable of making, quickly and boldly, responsible decisions in the most intricate situations, comrades who are experienced, steered, stable, who will not be weakened under any circumstances, who will follow the line of the Party.

"Where are these forces trained? They are trained in militant actions of the masses. These militant, courageous [fol. 114] members are our future leading forces. We must help them, encourage them, school them in action, teach them in training schools, persuade them to study and read fundamental Marxist-Leninist classics. We need thousands upon thousands of such forces, in order to be able to give leadership to the leftward moving masses."

Page 112. "Who are the professional revolutionists?"

"Comrade Lenin in his writings always stressed the necessity of developing a core of comrades from among the best, tested mass leaders, to such a point that they would be able to serve the proletariat as trained, skilled

revolutionary leaders. There is a misconception in the ranks of the Party as to what a professional revolutionist, in the Leninist sense is. Some are of the opinion that a professional revolutionist is a comrade whom the Party takes out of the factory and assigns as full-time functionary, in other words, that the Party organization (Section-District-Center) supports him while he spends all his time on Party work. This notion is wrong.

"A professional revolutionist is a highly developed comrade, trained in revolutionary theory and practice, tested in struggles, who gives his whole life to the fight for the interests of his own class. A professional revolutionist is ready to go whenever and wherever the Party sends him. Today he may be working in a mine, organizing the Party, the trade unions, leading struggles; tomorrow, if the Party so decides, he may be in a steel mill; the day after tomorrow, he may be a leader and organizer of the unemployed. Naturally, these professional revolutionists are supported by the Party organization if their assignment doesn't send them to work in shops or mines. From these [fol. 116] comrades the Party demands everything. They accept Party assignments; the matter of family associations and other personal problems are considered, but are not decisive. If the class struggle demands it, he will leave his family for months, even years. The Professional revolutionist cannot be demoralized, he is steeled, stable. Nothing can shake him. Our task is to make every Party member a professional revolutionist in this sense."

Page 124, this is the final paragraph: "Every Communist must become a leader of the workers. Every Communist must know that the Party has a historical mission to fulfill, that it has the mission of liberating the oppressed, exploited masses from the yoke of capitalism, that it has the mission of organizing and leading the masses for the revolutionary overthrow of capitalism, and for the establishment of the new world, a Soviet America." [fol. 117] Page 98: "What is the relation between the C.P. and Y.C.L.?"

"The Young Communist League is a mass organization of youth. The Communist Party is responsible for building this very important mass organization. The relation between the Party and the Y.C.L. is guided by these principles. The Party units bear political responsibility for

building the Y.C.L. In order to carry out this responsibility, the following organizational rules are observed by the Party.

"1. Each Party unit assigns one comrade for work in the corresponding Y.C.L. unit. This assigned member is not a formal representative of the Party to the Y.C.L., but a mature comrade who participates in all activities of the Y.C.L., helps it to formulate policies and to carry out decisions.

"In a party unit territory where there is no Y.C.L. unit, [fol. 118] one or two comrades should be assigned to the special task of building the Y.C.L. organization.

"2. In order to co-ordinate the work between the Party and the Y.C.L., the Party should select the Y.C.L. member, preferably one who is a member also of the Party, to attend regularly the meetings of the unit bureau. It is understood that all Y.C.L. members who are members of the Party attend Party unit membership meetings.

"3. The same rules are observed on a section scale. The Section Committee has one of its members assigned to the Y.C.L. Section. One member of the Y.C.L. Section Committee attends regularly the meetings of the Section Party Committee."

Q. Mr. Lantner, I think you testified that in this teaching period from 1933 to 1936, you used some part of the time, the Little Lenin Library?

A. That is correct.

[fol. 119] (Thereupon documents marked Government's Exhibits Nos. G-13 to G-19, inclusive, for identification.)

Q. With respect to Government's Exhibit G-12, the Communist Party Manual or Peters' Manual, I meant to ask, before the preface consisting of page 3 through 7 bears the name of Jack Stachel. Who was he?

A. At that time Jack Stachel was Executive Secretary of the Communist Party of the United States of America, second in Command.

Q. The second in Command of the National?

A. What was his position when you left the Party in 1950?

A. He was the National Educational Director of the Communist Party, and a member of the National Committee of the Communist Party.

Q. I show you Government's Exhibits G-13 through G-19, and ask you if you can identify those?

A. G-13, this is "Foundations of Leninism", by Joseph Stalin. This is not a Little Lenin Library edition. This is a special edition, second hundred thousand, and the contents of the same as in the Little Lenin Library edition.

G-14 is "Problems of Leninism" by Joseph Stalin

[fol. 120] Q. Are the contents of that—

A. This is a Little Lenin Library edition.

Q. Contents of G-15 are the same contents as forms the book in the Little Lenin Library edition?

A. "State and Revolution" by V. I. Lenin. This is also a special edition, third printing, 100,000, but the contents are the same as the Little Lenin Library.

G-16 is "Left Wing Communism, an Infantile Disorder", by V. I. Lenin, Little Lenin Library edition.

G-17 is "Imperialism", by V. I. Lenin, Little Lenin Library edition.

18 is "What is to be Done", by V. I. Lenin, Little Lenin Library edition.

19 is "The Proletarian Revolution and Renegade Kautsky," by V. I. Lenin, Little Lenin Library edition.

Q. The Contents of these books or Little Lenin Library book itself, formerly what is known as the Little Lenin Library Series?

A. Classics, yes.

Q. Were they used in your teachings or Party functionary operations from 1932 to 1950?

A. Yes.

Q. These were current books used among Party functions before you left the Party?

[fol. 121] Mr. McDonough: I object to the generality of these questions. He asked before. I submit it is meaningless as far as the issues are concerned. I object to them.

The Court: I sustain the objection.

Q. You have testified you used these in your teaching as Section Organizer between 1933 and 1936?

A. That is right.

Mr. McDonough: I object on the ground no proper basis has been laid.

The Court: Objection overruled.

(Thereupon Government's Exhibits Nos. G-12 to G-19, inclusive, previously marked for identification, received in evidence.)

Q. With reference to these exhibits G-13 through 19, did you do any teaching subsequent to the period of 1936, when you were teacher in the district school, you used these books teaching new students?

A. That is correct.

Q. Did you do any additional teaching during your tour as a Party functionary?

A. Yes.

Q. Tell us where that was.

A. First, I was a student in the National Training School [fol. 122] in 1941, and I was teaching in the years of March of 1946 and 1947 up to about April, 1948.

Q. What were you teaching there?

A. Marxism and Leninism, Political Economy, Party Organization, Party Structure.

Q. Whom did you teach, what units?

A. These were section functionaries in New York in one class, in another class it was section functionaries of a specific area from the west side of Manhattan. On the Marxism and Leninism in a class of Party functionaries in the Painters' Union, and I did Marxism and Leninism in a class of Party functionaries in the Furriers' Union.

Q. What is the date?

A. Furriers once a week preceding Labor Day in 1947. Then I did a number of classes in the fall of 1947 and 1948, spring of 1948 in the Jefferson School Building on 16th Street and Sixth Avenue on Party functionaries, on c1

Q. What was the subject?

A. Marxism and Leninism, Political Economy, Party Organization Structure. I did not teach Party Organization to the furriers class.

Q. Were there three series of trade unions?

A. Yes, one was Painters' Class, was in November and [fol. 123] December, 1946. That class was held out in 17

Seventh Street and White Plains Road in New York, in the Bronx. I held a class in the summer of 1947 at 350 East 81st Street, the composition of the class was trade union leaders in the packing industry.

Q. In those classes that you described, did you use Exhibit G-13 through G-19?

A. Amongst other books, yes, all of these.

The Court: We will take a ten-minute recess.

(Short recess taken.)

(After short recess.)

Q. Mr. Lautner, you have described the period of your teaching, and I want to bring you up to the year 1936. What, if anything, did you have to do as a Party functionary in that period?

A. I was appointed District Organizer of the Communist Party in the State of West Virginia.

Q. What was your particular mission, if there was one?

A. To give leadership and carry out the policies of the Communist Party in that state, build the Party in the State of West Virginia, particularly in the concentration industry in that state, that was coal mining, to build Party bridge organizations in that state, to build a Party Press in the State of West Virginia, and to attend National Plenum [fol. 124] Committee meetings in this period.

Q. National Committee, you mean National Committee meetings of the Communist Party?

A. That is correct.

Q. When did those meetings occur, how often?

A. I attended twice a year, early in the spring and late in the fall, and in convention years, every second year during convention time.

Q. You used the word "Plenum."

A. It is a provision of the Plenary meetings of the Communist Party.

Q. Who would be at these meetings?

A. Members of the Central Committee of the Communist Party, District Organizers, and heads of various bridge organizations and trade unions.

Q. That is bridge organizations?

A. Bridge organizations.

Q. What do you mean by that?

A. Organizations that the Party was building besides the Communist Party.

Q. Offshoots of it that they were building?

A. That is right.

Q. You used another term, Central Committee, what is that?

A. That was the highest body of the Communist Party [fol. 125] which designation later on was known as the National Committee. They changed it early—late 1939 or early 1940, but it meant the same top committee of the Communist Party.

(Thereupon booklet marked Government's Exhibit G-20 for identification.)

Q. Do you have a recollection of a Central Committee meeting or a Plenum in the fall of 1939?

A. Yes.

Q. Will you tell us what occurred at this Plenum?

A. Amongst others the report was given by Alexander Trachenberg, a member of the Central Committee and at that time on the importance of a new history of the Communist Party of the Soviet Union, and the book was introduced at that Plenum.

Q. What was Trachenberg's position in the Communist Party, if you know, at the time you left the Party?

A. He was Chairman of the National Review Commission of the Communist Party.

Q. I show you a book, Government's Exhibit G-20, and ask you if you can identify it?

A. This is a history of the Communist Party of the Soviet Union, Bolsheviks in parentheses, edited by a Commission of the Central Committee of the C.P.S.U., B in parentheses, authorized by the Central Committee of the C.P.S.U., B in [fol. 126] parentheses, International Publishers, New York, copyright 1939, second hundred thousand.

Q. What is this H.C.P.S.U., with a "B" in front, as I understand it?

A. Where do you see H.C.P.S.U.?

Q. H.C.P.S.U., what are those initials?

A. C.P.S.U., Communist Party of the Soviet Union, and the "B" in parentheses means Bolsheviks.

Q. You say at this plenum that book was introduced?

A. History was introduced. This is the second printing. Copy of the first printing was introduced which was a hard-bound volume.

Q. Contents were introduced at that meeting?

A. That is correct.

Q. Was there any action taken by the National Committee at this meeting with respect to that book?

A. Yes.

Q. What was that?

A. They decided to print a hundred thousand, and they allocated quotas to districts for the distribution of the first hundred thousand at this meeting.

Q. During that period as Party functionary, can you state whether or not this book was used in teaching and distributed throughout the membership of the Communist Party up to the time you left it?

[fol. 127] A. That is correct.

Mr. Henderson: I offer it in evidence..

(Thereupon book, Government's Exhibit G-20, previously marked for identification, received in evidence.)

Q. This book, Exhibit 20, History of the Communist Party of the Soviet Union, Bolsheviks, can you make any statement as to whether or not that book was used in the National Training School at any time?

A. Yes.

Q. As I understand it you attended that National Training School in *way* year?

A. 1941.

Q. Did you use it in teaching of your own?

A. Yes.

Q. When did you use it?

A. In the years 1946 and 1947 and parts of 1948, when I was teaching Marxism and Leninism.

Q. I would like to discuss with you your attendance at a National Communist Party convention in 1940, do you have a recollection of attending such a convention?

A. Well, yes, there were two conventions in that year. I attended both conventions.

Q. What was your capacity?

A. In the regular convention early summer of 1940 I [fol. 128] was on the presiding committee.

Q. What does that mean?

A. The presiding ~~committee runs~~ the convention in session, theoretically speaking, I was delegate, head of the West Virginia delegation. There was an emergency convention called in the fall of the same year. I attended that convention as a delegate.

Q. From West Virginia?

A. Yes.

Q. You said there was an emergency convention in the fall. What was the purpose of that convention?

Mr. McDonough: What year?

Q. What year?

A. 1940. The purpose of that convention was to formally and forthwith disaffiliate from the Communist International.

Q. Was there a discussion?

A. Yes.

Q. State what was said and by whom?

A. Browder gave the report, for the reason of the convention, that Congress enacted a law, so-called Voorhees Act, and the Party found itself in a position where if it remains affiliated to the Communist International it would be detrimental to the interest of the Party, so at this convention, with Browder's assurance whether disaffiliation in any way will affect our concept of proletarian Internationalism.

Q. The Voorhees Act had what as its principal interest?

Mr. McDonough: I object to that, the Statute is the best evidence.

The Court: I think that is the law.

Mr. Henderson: I asked him whether the Voorhees Act had anything to do with the Communist Party.

The Witness: Browder said it would force the Party to register as a foreign agent.

Q. Therefore, they severed the foreign tie?

A. Yes.

Mr. McDonough: All over my objection.

The Court: This last question only asked—

Mr. McDonough: What was discussed in 1946 before this indictment is not binding on my defendant.

The Court: Objection overruled.

Q. What action did the convention take?

A. It formally disaffiliated.

Q. I want to bring your attention to the National Training School of the Communist Party in 1941. Did you attend it?

A. I did.

[fol. 130] Q. As a pupil?

A. Yes.

Q. Who assigned you to the school?

A. One of the acting secretaries of the Communist Party at that time, a person by the name of Roy Hudson.

Q. How long did the course last?

A. About three months.

Q. Was it an everyday course?

A. Every day.

Q. How long were the sessions?

A. Sessions were every day; we had three different type of sessions. We had a regular class session which ran three or four hours in the morning, and in the afternoon we had group sessions and in the evening, we had to prepare our papers and reports for the next day's class session.

Q. How many pupils attended the sessions at one time?

A. Only seven.

Q. What is the National Training School?

A. The National Training School at that time was the highest school that the Party can afford, to select Party leaders to attend.

Q. It was held in what city?

A. New York City.

Q. How were you paid during that period, if you were?

[fol. 131] A. I was getting my regular Party functionary salary.

Q. From the Party?

A. From the Party.

Q. Can you give us a general idea how the school was conducted, the manner of holding classes?

A. First we had our class in a different place every day, various apartments, various parts of the city. We

were told by the class director, Pop Mindell to keep away from the Party Headquarters.

Q. You went to various other places about the city for the classes?

A. Yes, class had a librarian and Secretary, a person in charge of quarters and transportation where the class was held each day. The class was broken up into two groups, and then we had the assigned curriculum, subject matters that were taught to us and the instructors were notified from time to time where to come to give instructions.

Q. Can you tell us the names of some of the instructors during this three-month period? Can you give us the names of some of the instructors and the courses they taught during the course of this school?

A. Marxism and Leninism was taught by a person known as George Siskind. History of the Communist Party, of the Soviet Union was taught by a person who used [fol. 132] the name of Joe in the class, but his name was Sam Carr. Political Economy was taught by Pop Mindell. Party organization was taught by John Williamson. Materialism was taught by Aorð Landy. Party and trade union problems was taught by Jack Johnstone. The Negro Question was taught by James W. Ford. China was taught by Ruby Baker. General Science was taught by a person known as John. American history—

Q. No other name ever known to you?

A. No. American History was taught from the Communist Party point of view by a person, Francis Franklin. Then we had other instructors who came in looking from time to time, Roy Hudson on Party Problems and others.

Q. Were those people full-time teachers, or do you know whether they had any other activity or functionaries?

A. Some were full-time teachers, others were leading functionaries of the Communist Party. One was executive secretary of the Canadian Party and one was assistant professor for student instructor at Columbia University.

Q. Who was executive secretary of the Canadian Party?

A. Sam Carr.

Q. Where did he make his headquarters?

[fol. 133] At that time in New York.

Q. Who was this professor at Columbia?

A. That was John.

Q. He never became known to you by any other name?

A. No.

Q. What did he teach?

A. Science.

Q. Could you tell us what the activities of the other persons you mentioned were?

A. Williams was a member of the Central Committee or National Committee of the Party.

Q. At that time how many members of the National Committee of the Party were there?

A. In 1941 open members, there were 28, I guess.

Q. Was he one of them?

A. I don't know whether he was an open one or not an open one, but he was a member of the Central Committee. There was a reason for just 28 at that time.

Q. Do you want to state the reason?

A. Yes, at the preceding committee meeting in the 1940 convention, Browder came in and submitted a list of approximately 28 names, and he said "We are going through turbulent times." We had to safeguard the continuity of the Party leadership, and he proposed these names to be [fol. 134] elected openly at the convention as members of the Central Committee.

Q. Was there a larger Central Committee before that?

A. Yes, and there was a larger one after that particular situation eased up.

Q. Will you describe the activities of these teachers who taught for other functions?

A. George Siskind was member of the National School Commission, James W. Ford was member of the National Political Committee of the Party, a member of the National Committee, Roy Hudson was one of the acting secretaries of the Party, acting secretaries of two, Francis Franklin was instructor in the school, Aoro Landy was secretary of the groups commission of the Communist Party at that time. Mr. Carr I stated was executive secretary of the Canadian Party. Jack Johnstone was the trade union secretary of the Party at that time.

Q. What books were used during this three-months course?

A. We used Lenin Selected Works, Lenin Collected Works, all volumes published up to that time. We used all the Little Lenin Library series published up to that time. We used the history of the C.P.S.U., used the program of the Communist International, we used "The United Front" by Dimitroff. We used three red covered books, compilations around a specific subject, one was "Strategy [fol. 135] and Tactics."

The Court: Here again, that is just a recital of names. That means nothing. If the exhibits are to be introduced, I suggest you introduce them.

(Thereupon book marked Government's Exhibit G-21 for identification.)

Q. I show you Government's Exhibit G-21 for identification, and ask you what that is?

A. This is Strategy and Tactics.

Mr. Henderson: I offer that in evidence.

The Court: Received.

(Thereupon Government's Exhibit G-21, previously marked for identification, received in evidence.)

(Thereupon three books marked Government's Exhibits G-22 to G-24, inclusive, for identification.)

Q. I show you another book, Government's Exhibit G-22, for identification, what is that?

A. "Dictatorship of the Proletariat".

Q. Is that one of the books used in the school?

A. Yes.

Mr. Henderson: I offer that in evidence.

(Thereupon Government's Exhibit G-22, previously marked for identification, received in evidence.)

[fol. 136] Q. I show you a third book, Government's Exhibit G-23, what is that?

A. "Theory of the Proletarian Revolution".

Q. Was that used in this school at the time of your attendance?

A. Yes.

Mr. Henderson: I will offer that.

The Court: Received.

(Thereupon Government's Exhibit G-23, previously marked for identification, received in evidence.)

Q. Finally, Government's Exhibit G-24, what is that, please?

A. That is "United Front against Fascism", by George Dimitroff.

Q. Was that used in your schooling in the National Training School?

A. Yes.

(Thereupon Government's Exhibit G-24, previously marked for identification, received in evidence.)

Q. These books I have marked in evidence, G-21 through G-24, remained as the books that were used in teaching in subsequent years?

A. These were amongst other books that we used in the 1941 National Training School. They are also used [fol. 137] in my classes in the Furriers' Full-time Training School in 1947, on the subject of Marxism and Leninism.

Mr. Henderson: I would like permission to read a few excerpts. I will read first, ladies and gentlemen, from the book called "Strategy and Tactics", Government's Exhibit G-21, pages 17 through 18.

"Bolshevism has popularized throughout the world the idea of the 'Dictatorship of the Proletariat', has translated these words from the Latin, first into Russian, and then into all the languages of the world, and has shown by the living example of the Soviet Government that the Workers and poorest peasantry, even of a backward country, even with the least experience, education, and habits of organization, have been able for a whole year amidst gigantic difficulties and amidst the struggle against the exploiters (who were supported by the bourgeoisie of the whole world) to maintain the power of the toilers, to create [fol. 138] a democracy that is immeasurably higher and broader than all previous democracies of the world, and to begin, with the aid of the creative ability of tens

of millions of workers and peasants, the practical realization of Socialism.

"Bolshevism has helped in a practical way to develop the Proletarian Revolution in Europe and America more powerfully than any Party in any other country has ever succeeded in doing. While the workers of the whole world are realizing more and more clearly every day that the tactics of the Scheidemanns and the Kautskys have not freed them from the Imperialist War and from wage-slavery under the Imperialist bourgeoisie, and that these tactics cannot serve as a model for any country, the masses of the proletarians of all countries are realizing more and more clearly every day that Bolshevism has indicated the right road of escape from the horrors of war and Imperialism, that Bolshevism can serve as a model of tactics for all."

Q. I want to interrupt and ask if the witness knows who is Scheidemann, who is that?

A. They were both top theoreticians in the second International, also known as reformist international, Yellow International, Hague International.

Q. Kautsky?

A. He is also a theoreticians of this Second International.

Q. You give the impression these are people not respected by the Communist Party?

A. They were not.

Q. Why?

Mr. McDonough: Do I understand he is giving his opinion? I have no objection, but I want to be clear.

The Court: Yes.

Q. Do you know from your experience what had happened with respect to these people that put them in disrepute with the Communist Party?

A. They were leaders of the German Social Democratic Party, world leaders of the trade union movement that believed in evolutionary growth, transition into Socialism. [fol. 140] They were branded as misleaders of labor. They were branded as traitors to their cause of the labor movement. They were the enemies of the leaders of the Communist or Third International.

Mr. Henderson: "Not only the European but the World Proletarian Revolution is maturing before the eyes of all, and it has been assisted, has been accelerated, has been supported, by the victory of the proletariat in Russia. Is all this enough for the complete victory of Socialism. Certainly not. One country cannot do more. But thanks to the Soviet government, this one country has nevertheless done so much that even if the Russian Soviet Government is crushed by world Imperialism tomorrow, as a result of an agreement between German and Anglo-French Imperialism, for example, even in this worst possible case, Bolshevik tactics will still have brought enormous benefit to Socialism, and will have assisted the growth of the [fol. 141] invincible world revolution."

Page 20; second paragraph, "From a study of the objective processes of capitalism in their development and decline, the theory of Marxism arrives at the conclusion that the fall of the bourgeoisie and the seizure of power by the proletariat, and the replacement of capitalism by Socialism, are inevitable. Proletarian strategy may be considered truly Marxist only when it makes this fundamental conclusion of the theory of Marxism the basis of its operations."

Page 25, "Tactics in connection with the Ebb and Flow of the Revolution."

"Tactics are the determination of the line of conduct of the proletariat for the comparatively short period of the Ebb or Flow of the government, of the rise or decline of the revolution, the struggle to carry out this line [fol. 142] by replacing old forms of struggle and of organization by new ones, old slogans by new ones, by combining these forms, etc. While the aim of strategy is to win the war, let us say against Tsarism or against the bourgeoisie, to carry the struggle against Tsarism or against the bourgeoisie to its end, tactics concern themselves with less important aims, as they strive, not to win the war as a whole, but rather to win a particular engagement, or a particular battle, to carry through successfully a particular campaign or action corresponding to the concrete circumstances of the rise or decline of the revolution. Tactics are a part of strategy, subordinate and subservient to it."

Where was this book printed?

The Witness: International Publishers.

Q. Where is that?

A. Here in New York.

Mr. Henderson: Pages 81 and 82. "In the struggle to [fol. 143] defend against fascism the bourgeois democratic liberties and the gains of the toilers, in the struggle to overthrow fascist dictatorship, the revolutionary proletariat prepares its forces, strengthens its fighting contacts with its allies and directs the struggle toward the goal of achieving real democracy of the toilers, Soviet power."

"The capitalist world is entering a period of sharp clashes as a result of the accentuation of the internal and external contradictions of capitalism."

"Steering a course in the direction of this perspective of the revolutionary development, the Seventh Congress of Communist International calls on the Communist Parties to display the greatest political activity and daring, to carry on a tireless struggle to bring about unity of action by the working class. The establishment of the united front [fol. 144] of the working class is the decisive link in the preparation of the toilers for the forthcoming great battles of the second round of proletarian revolutions. Only the welding of the proletariat into a single mass political army will ensure its victory in the struggle against fascism and the power of capital, for the dictatorship of the proletariat and the power of the Soviets. 'The victory of revolution never comes by itself. It has to be prepared for and won. And only a strong proletarian revolutionary party can prepare for and win victory'. (Stalin)."

There is a note, "Seventh World Congress of the Communist International, Resolution on the Report of Georgi Dimitrov, pp. 17-28; 33-34."

On page 34. "The Communists, while fighting also against the illusion that war can be eliminated while the capitalist system still exists, are exerting and will exert every effort to prevent war. Should a new imperialist [fol. 145] world war break out, despite all efforts of the working class to prevent it, the Communists will strive to lead the opponents of war, organized in the struggle for peace, to the struggle for the transformation of the im-

perialist war into civil war against the fascist instigators of war, against the bourgeoisie, for the overthrow of capitalism."

Bottom of page 95.

"At the present historical juncture, when on one-sixth part of the globe the Soviet Union defends Socialism and peace for all humanity, the most vital interests of the workers and toilers of all countries demand that in pursuing the policy of the working class, in waging the struggle for peace, the struggle against imperialist war before and after the outbreak of hostilities, the defense of the Soviet Union must be considered paramount.

"If the commencement of a counter-revolutionary war [fol. 146] forces the Soviet Union to set the Workers' and Peasants' Red Army in motion for the defense of Socialism, the Communists will call upon all toilers to work, with all their means at their disposal and at any price, for the victory of the Red Army over the armies of the imperialists."

From a book called "The Dictatorship of the Proletariat", which is Exhibit G-22, page 39, under the title "The Dictatorship of the Proletariat and its Three Main Aspects."

Q. Where was this book printed?

A. International Publishers, in New York.

Mr. Henderson: "1. Historical Necessity of the Dictatorship of the Proletariat.

"Between capitalist and communist society lies a period of revolutionary transformation from one to the other. There corresponds also to this a political transition period during which the state can be nothing else than the revolutionary dictatorship of the proletariat.

[fol. 147] "A. Stalin on the Marxist-Leninist Teaching of the Dictatorship of the Proletariat as a Weapon of the Proletarian Revolution.

"... The question of the proletarian dictatorship is above all a question of the basic content of the proletarian revolution. The proletarian revolution, its movement, its sweep and its achievements, acquire flesh and blood only through the dictatorship of the proletariat. The dictatorship of the proletariat is the weapon of the proletarian

revolution, its organ, its most important strong-hold which is called into being, first, to crush the resistance of the overthrown exploiters and to consolidate its achievements; secondly, to lead the proletarian revolution to its completion, to lead the revolution onward to the complete victory of socialism. Victory over the bourgeoisie and the overthrow of its power may be gained by revolution even [fol. 148] without the dictatorship of the proletariat. But the revolution will not be in a position to crush the resistance of the bourgeoisie, maintain its victory and move on to the decisive victory for socialism, unless at a certain stage of its development it creates a special organ in the form of the dictatorship of the proletariat as its principal bulwark.

"The question of power is the fundamental question of the revolution." (Lenin). Does this mean that the only thing required is to assume power, to seize it? No, it does not. The seizure of power is only the beginning. For a number of reasons, the bourgeoisie overthrown in one country for a considerable time remains stronger than the proletariat which has overthrown it. Therefore, the important thing is to retain power, to consolidate it and make it invincible. What is required to attain this end? At least [fol. 149] three main tasks confronting the dictatorship of the proletariat 'on the morrow' of victory must be fulfilled. They are:

"a. to break the resistance of the landlords and capitalists overthrown and expropriated by the revolution, and to liquidate every attempt they make to restore the power of capital;

"b. to organize construction in such a way as will rally all toilers around the proletariat and to carry on this work in such a way as will prepare for the liquidation, the extinction of classes;

"c. to arm the revolution and to organize the army of the revolution for the struggle against the external enemy and for the struggle against imperialism."

"The dictatorship of the proletariat is necessary in order to carry out and fulfill these tasks."

Page 66. "To put it briefly: The dictatorship of the proletariat is the domination of the proletariat over the [fol. 150] bourgeoisie, untrammelled by law and based on violence and enjoying the sympathy and support of the

toiling and exploited masses. (Cf. Lenin, *State and Revolution*.)"

Pages 94 and 95. "Now, we must consider the dictatorship of the proletariat from the point of view of its structure, of its 'mechanism', of the role and significance of the 'belts', the 'levers', and the 'directing force', the totality of which comprise 'the system of the dictatorship of the proletariat' (Lenin), and with the help of which the daily work of the dictatorship of the proletariat is accomplished.

"What are these 'belts' or 'levers' in the system of the dictatorship of the proletariat? What is the 'directing force'? Why are they needed?

"The levers or the belts are those very mass organizations of the proletariat without whose aid the dictatorship [fol. 151] cannot be realized.

"The directing force is the advanced detachment of the proletariat, its vanguard, which constitutes the main guiding force of the dictatorship of the proletariat.

"The proletariat needs these belts, these levers, and this directing force, because without them it would be, in its struggle for victory, like a weaponless army in face of organized and armed capital. It needs these organizations because without them it would suffer inevitable defeat in its fight for the overthrow of the bourgeoisie, for the consolidation of its own power and for the building of socialism. The systematic help of these organizations and the directing force of the vanguard are indispensable, because without them the dictatorship of the proletariat could not be to any degree durable and firm.

"What are these organizations?

"First of all there are the workers' trade unions, with [fol. 152] their national and local ramifications in the shape of a whole series of production, cultural, educational and other organizations. These unite the workers of all trades. They are not Party organizations. The trade unions can be termed the all-embracing organization of the working class which holds power in our country. They constitute a school of Communism. They promote from their midst the best people to carry out leading work, in all branches of administration. They form the link between the advanced and the backward elements in the ranks of the working

class.² They unite the masses of the workers with their vanguard."

With respect to Exhibit 23, Theory of the Proletarian Revolution, I want to read pages 131 and 132.

"The Revolutionary Crisis.

"The fundamental law of revolution, confirmed by all revolutions and particularly by all Three Russian revolutions [fol. 153] in the twentieth century, is as follows: it is not sufficient for revolution that the exploited and oppressed masses understand the impossibility of living in the old way and demand changes; for revolution, it is necessary that the exploiters should not be able to live and rule in the old way. Only when the 'lower classes' do not want the old and when the 'upper classes' cannot continue in the old way, then only can revolution succeed. This truth may be expressed in other words: revolution is impossible without a national crisis affecting both the exploited and the exploiters. It follows that for revolution it is essential, first, that a majority of the workers (or at least, a majority of the class conscious, thinking, politically active workers) should fully understand the necessity for revolution and be ready to sacrifice their lives for it; secondly, that the ruling classes [fol. 154] be in a state of government crisis which draws even the most backward masses into politics (a symptom of every real revolution is: the rapid tenfold and even hundredfold increase in the number of hitherto apathetic representatives of the toiling and oppressed masses capable of waging the political struggle), weakens the government and makes it possible for the revolutionaries to overthrow it rapidly.

If it is a question of the practical activities of the masses, a question of the disposition, if one may so express it, of vast armies, of the alignment of all the class forces of the given society for the final and decisive battle, then propaganda alone, the mere repetition of the truths of 'pure' communism are of no avail. In these circumstances one must count, not up to a thousand—as is really done by the propagandist who belongs to a small group which does [fol. 155] not yet lead the masses; but one must count in millions and tens of millions. In these circumstances one must not only ask one's self whether the vanguard of the revolutionary class has been convinced, but also whether

the historically effective forces of all classes—positively of all classes in the given society without exception—are aligned in such a way that the decisive battle is fully matured, in such a way that (1) all the class forces hostile to us have become sufficiently confused, are sufficiently at loggerheads with each other, have sufficiently weakened themselves in a struggle beyond their capacities; that (2) all the vacillating, wavering, unstable, intermediate elements—the petty bourgeoisie and the petty-bourgeois democracy as distinct from the bourgeoisie—have sufficiently exposed themselves before the people and have sufficiently disgraced themselves through their practical bankruptcy; and that (3) among the proletariat a mass mood in favor of supporting the most determined, unreservedly bold, revolutionary action against the bourgeoisie has arisen and begins to grow powerfully. Then, indeed, revolution is ripe; then, indeed, if we have correctly gauged all the conditions briefly outlined above and if we have chosen the moment rightly, our victory is assured.

“The main task of the contemporary Communism in Western Europe and America is to acquire the ability to seek, to find, to determine correctly the concrete path, or the particular turn of events that will bring the masses right up to the real, decisive, last and great revolutionary struggle.”

The Court: We will adjourn until tomorrow morning at 10 o'clock.

(Whereupon an adjournment was taken until March 29, 1956, at 10 o'clock A.M.)

[fol. 157] PROCEEDINGS OF MARCH 29, 1956, at 10 o'clock A.M.

APPEARANCES: Same as before noted.

JOHN LAUTNER, resumed the stand and testified further as follows:

Direct examination. (resumed)

By Mr. Henderson:

Q. Mr Lautner, you have testified before about your attendance at the National Training School in 1941. You testified that the history of the Communist Party, Soviet Union, which is Exhibit G-20 was used at that time, is that correct?

A. That is correct.

Q. Do you have a recollection of the course discussing just and unjust wars?

A. Yes, that was discussed in the study of Marxism and Leninism by George Siskind.

Q. Will you tell us what the teachings concerning unjust wars, just and unjust wars were concerning this course?

Mr. McDonough: May I renew my objection, at least at the opening, to this testimony on the ground that the documentary evidence and literature which the Government has [fol. 158] offered is the best evidence, that this witness has not been qualified to testify. It is not a proper subject for expert testimony, that the matters and teachings are too early and too remote, many years prior to the time of this indictment, in no way connected with this defendant, on all those grounds and the grounds stated yesterday, incompetent, irrelevant and immaterial.

The Court: Objection overruled. I understand the teaching on this particular occasion, may I have the occasion?

Mr. Henderson: This is the National Training School of the Communist Party.

The Court: What year?

The Witness: 1941.

Q. Will you state what the teaching was?

A. That the Communists are not pacifists. They believe in certain types of war, and they characterize two types of wars. One type is a just war, a certain other type is an unjust war. A just war is the class struggle itself, struggle against capitalism, oppression struggle of nations for independence. These wars are characterized as just

[fol. 159] wars, and the Communist Party supports these types of wars. The unjust wars are wars between Imperialistic countries for sources of raw materials, for markets; wars between capital countries. A war against the Soviet Union is an unjust war. In these types of wars the Communist Party policy is to fight against the instigators of these wars, even if it is necessary to fight their own Imperialistic government.

Q. That statement in substance is set forth in the History of the Communist Party Soviet Union, used in the school?

A. That is correct.

Mr. McDonough: I object.

The Court: I sustain the objection.

Mr. Henderson: I withdraw the question. I would like to read a portion of Government's like to read a portion of Government's Exhibit G-20, "History of the Communist Party, of the Soviet Union", page 167: "THEORY AND TACTICS OF THE BOLSHEVIK PARTY ON THE QUESTION OF WAR, PEACE AND REVOLUTION."

Q. Before I begin the paragraph I am about to read, you used the word "Bolshevik". Will you tell us what a Bolshevik [fol. 160] *vik* is, or the Party?

A. The Communist Party of the Soviet Union is referred to as the Bolshevik Party. Members of that Party were Bolsheviks. The origin of the designation Bolshevik came from the ranks in the old Russian Social Democratic Party. The majority who went with Lenin were designated as Bolsheviks. "Bolsha" means majority. The minority were branded as Mensheviks, the social democrats who fought the Bolshevik Party were known as Mensheviks.

Mr. Henderson: I will read this.

Mr. McDonough: I have the page, but I don't know the paragraph.

The Court: When did that term originate, in 1917?

The Witness: Before 1917, when a split occurred in the Russian Social Democratic Party. I don't know the exact date, but it was after 1905 and before 1910, in that period of time.

Q. You said, Mr. Lautner, the Communist Party in Russia is now, members are referred to as Bolsheviks?

A. That is right.

Mr. Henderson: (Reading) "The Bolsheviks maintained that the lesser evil for the People would be the military [fol. 161] defeat of the Tsarist government in the Imperialist war, for this would facilitate the victory of the people over Tsardom and the success of the struggle of the working class for emancipation from capitalist slavery and Imperialist Wars. Lenin held that the policy of working for the defeat of one's own Imperialist government must be pursued not only by the Russian revolutionaries, but by the revolutionary parties of the working class in all the belligerent countries.

"It was not to every kind of war that the Bolsheviks were opposed. They were only opposed to wars of conquest, imperialist wars. The Bolsheviks held that there are two kinds of war.

"Just wars, wars that are not wars of conquest but wars of liberation, waged to defend the people from foreign attack and from attempts to enslave them, or to liberate the people from capitalist slavery, or lastly, to liberate colonies and [fol. 162] dependent countries from the yoke of Imperialism, and

"B, unjust wars, wars of conquest, waged to conquer and enslave foreign countries and foreign nations.

"Wars of the first kind, the Bolsheviks support it. As to wars of the second kind, the Bolsheviks maintain that a resolute struggle must be waged against them to the point of revolution and the overthrow of one's own Imperialist government."

Q. Can you give us an example of the application as a Party member of this theory of just and unjust wars?

Mr. McDonough: I object, if the Court please.

The Court: I sustain the objection. That means to give his own personal interpretation.

Q. In 1941 you were a Party functionary?

A. That is correct.

Q. You have been taught this theory of just and unjust wars?

A. That is correct.

Q. Can you state whether or not there was an application in Party propaganda or otherwise of the application of this just and unjust war?

A. Yes.

[fol. 163] Q. Will you state it?

Mr. McDonough: If he was taught it, I have no objection. I am not doing this to interrupt.

The Court: I understand this is some action taken from the Party.

The Witness: In 1941, the Party abruptly changed its policy—

Mr. McDonough: I object to it on the ground this is not something he was taught. He is giving a personal narrative of some fact. I submit this is not either expert testimony nor something he was taught.

The Court: Will you support this by facts?

Mr. Henderson: I will withdraw the question.

(Thereupon booklet marked Government's Exhibit G-25 for identification.)

Q. I show you Government's Exhibit G-25 for identification, a booklet called "The Communist", dated July, 1941. What is "The Communist"?

A. Communist was at that time the official theoretical organ of the Communist Party.

Q. You will have to say that again.

A. "The Communist" was in 1941 the official theoretical [fol. 164] organ of the Communist Party.

Q. Of America?

A. Of the United States.

Q. Later was that succeeded by another periodical?

A. Yes.

Q. What was that called?

A. Political affairs.

Q. The fly-leaf in this book, Exhibit G-25, bears the statement "A magazine of the theory and practice of Marxism and Leninism published monthly by the Communist Party of the United States", is that correct?

A. That is correct.

OFFERS IN EVIDENCE AND OBJECTIONS THEREON

Mr. Henderson: I offer that in evidence.

Mr. McDonough: I do not question the identity of the book. I have no objection other than those originally stated.

The Court: Objection overruled.

(Thereupon Government's Exhibit G-25, previously marked for identification, received in evidence.)

Q. Will you give your attention to this Government's Exhibit G-25 "The Communist"? I direct your attention to the first page and to the second page of the booklet, the third, rather pages 579 and 581. What articles do you find in there, what is the title?

[fol. 165] A. The title of the article is "Support the U.S.S.R. in it fight against the Nazi War Statement of the Communist Party, U.S.A., June 22, 1941." On page 581 there is an article entitled "Unlike Imperialism Grabs for the Western Hemisphere."

Q. Can you state what event, if you know, occurred either June 21, 1941 or June 22, 1941?

A. The German Armies attacked the Soviet Union on that night.

Q. Prior to that date how were the German armies engaged?

A. Prior to that date the German—Germany had a pact with the Soviet Union, a non-aggression pact—

The Court: This is history.

Mr. McDonough: I submit I do not feel this witness is qualified to give history.

The Court: If there could be any dispute, I would like to sustain. These are historical dates that could be checked, the same as when was Pearl Harbor. We don't need an expert.

Mr. McDonough: I did not object to the statement Germany invaded Russia—

The Court: All he said, there was a non-aggression pact. That is a matter of history and common knowledge.

[fol. 166] State what the situation was with respect to the state of war between Russia and Germany prior to June.

A. I already stated.

Q. There was a non-aggression pact?

A. Yes.

Q. With whom was Germany in war prior to this time?

A. With England and France, so-called Western Alliance.

Mr. Henderson: Page 581 of this Exhibit G-25, there is an article entitled "Yankee Imperialism Grabs for the Western Hemisphere", by William Z. Foster.

"The present war constitutes a violent redivision of the world among the great imperialist powers. The main motive power behind the savage struggle for markets, raw materials, colonies and strategic positions is the ever-deepening general crisis of the obsolete and rotting world capitalist system. Assertions that either group of the warring powers is fighting for democracy and civilisations are an insult to the people's intelligence."

That is one article. Another article, page 579, is en- [fol. 167] titled "Support the U.S.S.R. in its Fight Against Nazi War." This is the statement, "The armed assault by German fascism and its satellites against the Soviet Union is an unprovoked criminal attack upon the greatest champion of peace, freedom and national independence—the land of socialism. This military aggression by the fascist rulers of Germany is also an attack upon the people of Germany. It is an attack likewise upon the peoples of the United States and of the entire world."

[fol. 168] Mr. McDonough: If the Court please, I recall yesterday your Honor said if there was anything in the United States Attorney's reading which distorted, I have a right to immediately read it. I don't want to read it all, but I think the record should show the first article from which Mr. Henderson read is an article as I have it on the photostat sheets handed to me, eighteen double column magazine pages.

Mr. Henderson: I think you have it clear, your Honor, these documents are in evidence for the jury's perusal. My purpose in reading has been to bring the basis of the information that I thought would be competent in this case.

The Court: He just wanted to call that to the jury's attention, it was a long article.

Mr. McDonough: I would like to point that out with respect to all the articles.

The Court: Yes.

Mr. McDonough: I did not do it yesterday.

Mr. Henderson: I would like to substitute a photostatic [fol. 169] copy of these sheets of the Communist Party, Government's Exhibit G-25, in evidence instead of the original.

Mr. McDonough: I have no objection.

Q. From your studies as you told us, and your teachings, can you tell what the distinction is of an imperialist war from the Communist Party standpoint?

A. I already did that.

Q. Do it again?

A. Imperialist war is a war between two imperialist groups. It is a war for the redivision of markets and sources of raw materials.

Q. Mr. Lautner, I would like to bring you to the date when you left the Army, discharged from Service, when was that?

A. June, 1945.

Q. Did you have any further connection with the Communist Party following that?

A. Yes.

Q. How did that come about?

A. I reported back to the National Headquarters of the Communist Political Association, a name by which the Party was known at that time.

Q. That was the former Communist Party?

[fol. 170] A. That is correct.

Q. When did that change take place?

A. While I was in Service, 1944.

Q. Later I believe you testified that name was dropped and the Communist Party name was resumed?

A. Yes.

Q. With whom did you have a contact at that Headquarters?

A. John Williamson, Eugene Dennis, Jack Stachel.

Q. Where were these people situated?

A. This was in the office of John Williamson, on the 9th floor, 35 East 12th Street, Headquarters of the Communist party.

Q. What was the position of Williamson and these other people at that time?

A. Williamson was National Secretary of the Communist Political Association, and Eugene Dennis and Jack Stachel were members of the Board.

Q. What was the nature of your contact and what was done?

A. Williamson told me to acquaint myself with the problems that the Party was facing at that time. He told me to read the basic document pertaining to the issue of revisionism in the Party, the Duclos Article, the draft resolution of the Board, the Foster letter to the National Committee, the pre-convention articles in the Daily Worker [fol. 171] and in the Worker, and gave me a fraternal delegate's talk about the National Convention.

Q. I think you defined revisionism before. Will you do it again?

A. Revisionism is a departure from the Marxist-Leninist line. It is an effort to revise the basic concept of Marxism-Leninism. It comes as a result of giving in to the strength of capitalism. It is a right deviation from Marxism and Leninism.

Q. Had departure occurred in the Marxism theory?

A. It was so granted at the 1945 convention, that Browder and his policies were revisionary in his nature.

Q. Browder was leader at the time?

A. That is correct.

Q. Are you familiar with the so-called revision that occurred under Browder?

A. I am familiar with the report William Foster gave at the 1945 convention, where he in his report opened up the revisionist nature of Browder's policies.

Q. That was the convention you attended as fraternal delegate?

A. That is correct.

Q. What is this Duclos letter you spoke about?

A. Jacques Duclos is one of the International Leaders of the Communist movement; a leader of the French Communist Party, severely criticised—

Mr. McDonough: I think we ought to have the letter.

The Court: Yes, I think so.

The Witness: Browder's position—

Mr. McDonough: I think the same is true of the Foster report.

The Court: I think that is so. I expected that would be forthcoming.

Mr. Henderson: How does the Court wish that we do it? I am going to ask the Court to admit photostatic copies of this Daily Worker, May, 1945. Would you mark the original first?

The Court: If there is no objection, if the exhibit becomes admissible, he wants to use the photostat.

Mr. McDonough: I have no objection to marking the photostat. What is the date?

Mr. Henderson: May 24, 1945.

(Thereupon document marked Government's Exhibit G-26 for identification.)

Q. I show you Government's Exhibit G-26 for identification, and ask you if you can identify that?

A. Yes, this is May 24, 1945, Two Star Edition of the Daily Worker that contains the article of Jacques Duclos, [fol. 173] entitled, "On the Dissolution of the Communist Party of the United States.

Q. What is this Daily Worker?

A. Daily Worker is the official daily organ of the Communist Party.

Q. Of America?

A. Of America, that gives leadership and guidance and organizational aid to the Party—

Mr. McDonough: I object to commenting on what it does. I have not objected to the paper. It is a Communist Newspaper.

The Court: It is the official organ of the Party. That is all that is material. In the position he was in he would be able to state that.

Mr. McDonough: I have no objection, it is a Communist paper.

The Court: That is all there is to the paper.

Mr. McDonough: I object to this witness commenting on every exhibit.

Mr. Henderson: Suppose I ask him various subject matters and policies of the Party. I have not asked him that.

The Court: It seems to me we are getting into unnecessary argument. All you want to do is to establish it was [fol. 174] the official organ of the Party.

Mr. McDonough: I will stipulate that.

Mr. Henderson: I offer Government's Exhibit G-26.

Q. What page is that article on?

A. On one of the inside pages, page 7, 8, 9.

(Thereupon Government's Exhibit G-26, previously marked for identification, received in evidence.)

Q. Was that same article later contained in another periodical?

A. Yes.

(Thereupon booklet marked Government's Exhibit G-27 for identification.)

Q. I show you Government's Exhibit G-27 for identification, and ask you if you can identify that?

A. G-27 is a pamphlet entitled "Struggle Against Revisionism," published by the Communist Party U.S.A., New York.

Q. Does that contain this Duclos article?

A. Yes.

Q. The same article contained in Government's Exhibit G-26, is that correct, the Daily Worker?

A. That is correct.

Mr. Henderson: I offer this in evidence.

[fol. 175] (Thereupon Government's Exhibit G-27, previously marked for identification, received in evidence.)

Q. Mr. Lautner, I have already proven I am not very good on the French. How do you pronounce the first phrase?

A. Cahiers du Communisme.

Q. Before I read part of this I would like to ask you whether or not this so-called Duclos letter had any part in the convention of 1945?

A. Oh, yes.

Q. Was this read at the convention?

A. No.

Q. Was some action taken pursuant to the article?

A. The convention was called as one of the results of this article, and the article itself was discussed but not read. References were made to it.

Mr. Henderson: This, ladies and gentlemen, is entitled "On the Dissolution of the Communist Party of the U.S.A.," by Jacques Duclos, reprinted from the April issue.

"Many readers of *Cahiers du Communisme* have asked us for clarification on the dissolution of the Communist [fol. 176] Party of the U.S.A.; and the creation of the Communist Political Association.

"We have received some information on this very important political event, and thus we can in full freedom give our opinion on the political considerations which were advanced to justify the dissolution of the Communist Party.

"The reasons for dissolution of the Communist Party in the U.S.A. and for the 'new course' in the activity of American Communists are set forth in official documents of the Party and in a certain number of speeches of its former secretary, Earl Browder.

"In his speech devoted to the results of the Teheran Conference and the political situation in the United States, delivered December 12, 1943, in Bridgeport and published in the Communist magazine in January, 1944, Earl Browder for the first time discussed the necessity of changing the [fol. 177] course of the C.P.U.S.A.

"The Teheran Conference served as Browder's point of departure from which to develop his conceptions favorable to a change of course of the American C.P. However, while justly stressing the importance of the Teheran Conference for victory in the war against fascist Germany, Earl Browder drew from the Conference decisions erroneous conclusions in no wise flowing from a Marxist analysis of the situation. Earl Browder made himself the protagonist of a false concept of the ways of social evolution in general, and in the first place, the social evolution of the United States.

"Earl Browder declared, in effect, that at Teheran capitalism and socialism had begun to find the means of peaceful co-existence and collaboration in the framework of one

and the same world; he added that the Teheran accords [fol. 178] regarding common policy similarly presupposed common efforts with a view to reducing to a minimum or completely suppressing methods of struggle and opposition of force to force in the solution of internal problems of each country."

Going to page 23. "The new political course outlined by Browder found but few adversaries among the leading militants of the C.P.U.S.A. At the enlarged session of the political bureau of the Party, those who spoke up violently against Browder were William Foster, president of the C.P.U.S.A. and Darcy, member of the Eastern Pennsylvania district.

"Foster expounded his differences with Browder in two documents—in a letter to the national committee of the C.P.U.S.A. and in his introductory speech to the extraordinary session of the National Committee, Feb. 8, 1944.

[fol. 179] "In these two documents, Foster criticizes Browder's theoretical theses regarding the change in the character of monopoly capital in the U.S.A., the perspectives of postwar economic development as well as Browder's position on the question of the Presidential elections."

On page 23 again: "Foster violently criticized Browder because the latter, while outlining a new course in the activity of the American C.P., had lost sight of several of the most fundamental principles of Marxism-Leninism."

Page 31 of the same article, "Without analyzing in detail Browder's full position on the dissolution of the C.P.U.S.A. and creation of the Communist Political Association, and without making a developed critique of this position, one can nevertheless deduce from it the following conclusions:

"1. The course applied under Browder's leadership [fol. 180] ended in practice in liquidation of the independent political party of the working class in the U.S.

"2. Despite declarations regarding recognition of the principles of Marxism, one is witnessing a notorious revision of Marxism on the part of Browder and his supporters; a revision which is expressed in the concept of a long-term class peace in the United States, of the possibility of the suppression of the class struggle in the post-war period

and of establishment of harmony between labor and capital."

On page 32. "In truth, nothing justifies the dissolution of the American Communist Party in our opinion. Browder's analysis of capitalism in the United States is not distinguished by a judicious application of Marxism-Leninism. The predictions regarding a sort of disappearance of class contradictions in the U. S. correspond in no wise to [fol. 181] a Marxist-Leninist understanding of the situation."

Mr. McDonough: Again, may it appear that the portions that Mr. Henderson's reading came from an article of 15 double column magazine pages, also that the portion just read from Exhibit 20 "History of the Communist Party of the Soviet Union, Bolsheviks" is from a book, a volume of 363 pages.

Q. Mr. Lautner, following this Duclos letter, portions of which I have read, were the discussions in Communist circles about the Duclos letter?

A. Yes.

Q. Was it a subject matter of some action at the 1945 National Convention of the Communist Party?

A. The Duclos article in itself, there was no evidence—on the article, but as a result of that article an emergency convention was called, and that convention was held in July, 1945.

Q. Were you there?

A. Yes.

Q. What happened at that convention?

A. At that convention the Party was re-established as the Communist Party of the United States of America, and the Party reverted back—

[fol. 182] Mr. McDonough: I object to what the Party reverted back to.

The Court: Was there a resolution? If there was official action, I think we should have the official action rather than an interpretation of it.

(Thereupon document marked Government's Exhibit G-28 for identification.)

Q. I ask you if you can identify that?

A. This is the June 4, 1945 two-star edition of the Daily Worker.

Q. Does that contain any reference to a resolution of—to be proposed to the 1945 Convention of the Communist Party?

A. Yes, this copy of the Daily Worker contains the resolution of the National Board of the C.P.A., adopted on June 2nd, 1945, entitled "The Present Situation and the Next Tasks."

Mr. Henderson: I offer that in evidence.

Q. This Daily Worker is the same, copy of the same document you previously identified, similar newspaper which is the organ of the Communist Party of American?

A. The official organ, yes.

Q. You referred to page 2, and it is actually on page 4, [fol. 183] is that right? I did not mark that exhibit in evidence. May I do it after I read this?

Q. What was this resolution of the National Board, C.P.A.?

A. It was a resolution prepared by the National Board for a pre-convention discussion in the Communist Party, as it was an established procedure to have that kind of resolution prior to the convention of the Communist Party and discussion for sixty days in the ranks of the Party.

Q. Then it was to be proposed to the convention at a later date?

A. That is correct.

Mr. Henderson: I would like to read certain parts of the resolution.

The Court: Was it definitely proposed at the convention?

The Witness: It was proposed.

The Court: Action taken?

The Witness: Action was taken upon it, a vote was taken upon it, and with the amendment that the incoming National Committee will approve a resolution in final shape.

The Court: Why not show the final action?

Q. What was the final action?

A. It was passed, final resolution is in the document [fol. 184] there.

Q. "Struggle Against Revisionism."

A. That is correct.

Q. Will you find it?

Mr. McDonough: We are talking about the same resolution in the Daily Worker.

The Court: But at that stage it was a proposed resolution, my point is instead of showing what steps, why not show the final action?

Mr. McDonough: The headline in the Daily Worker says "Adopted" —

The Court: That was not the National Convention.

Mr. Henderson: This reads, page 85 of Exhibit G-27, "Resolution of the National Convention of the Communist Party, U.S.A., adopted July 28, 1945."

Q. Is that correct?

A. That is correct.

Q. I am trying to supply Mr. McDonough with numbers. Was this final resolution as adopted exactly the same as the draft resolution?

A. There were minor amendments, but in substance it was the same.

Q. What I am going to read to the jury is the final resolution [fol. 185] as adopted?

A. That is right.

Mr. Henderson: From G-27.

The Court: Adopted by the convention?

Mr. Henderson: Page 96. "This revision of the Marxist-Leninist theory regarding the role of monopoly capital led to other erroneous conclusions, such as to utopian economic perspectives and the possibility of achieving the national liberation of the colonial and dependent countries through arrangements between the great powers. It also led to tendencies to obscure the class nature of bourgeois democracy, to false concept of social evolution, to revision of the fundamental laws of the class struggle and to minimizing the independent and leading role of the working class."

Paragraph 9, page 99.

"Clearly, the single, most essential pre-condition necessary to enable us to perform effectively our Communist

[fol. 186] duties in the postwar period as the vanguard and champion of the interests of the working class and the nation, is to overcome quickly and decisively our errors and mistakes, especially to eradicate all vestiges of opportunism in our policies and mass work.

"Toward this end the entire Communist organization must immediately make a thorough and self-critical examination of all policies and leadership. We must establish genuine inner-democracy and self criticism throughout our organization. We must refresh and strengthen the personnel of all responsible leading committees in the organization, and establish real collective leadership in all Party committees. In doing this we must combat all tendencies toward factionalism, toward distortions and toward weakening the basic unity of our Communist organization.

At the same time, we Communist must avoid all sectarian tendencies and boldly and energetically expand our own Marxist working class and anti-fascist mass activities and our most active participation in the broad labor and democratic movements. We must resolutely strengthen our independent Communist role and mass activities. We must develop a consistent concentration policy and build our Communist organization especially amongst the industrial workers. We must wage a resolute ideological struggle on the theoretical front, enhancing the Marxist understanding of our entire organization and leadership."

Q. At that convention was the name of the Party changed?

Mr. McDonough: Just a moment, if the Court please, are you finished reading? I would like to read the last paragraph of this exhibit.

The Court: All right.

Mr. McDonough: Does your Honor want to see it?

The Court: No, you can read it.

Mr. McDonough: This is the last paragraph, page 99, [fol. 188] immediately following the last, it is the last paragraph of subdivision 9 of which Mr. Henderson read the first three paragraphs:

"We Communists renew our pledge to do everything to destroy fascism and reaction, to advance the cause of

American and world democracy, the cause of national freedom and social progress. We are determined to cooperate with all anti-fascists and all democratic forces to achieve these great objectives."

May it also appear that this resolution covers 13 double column printed pages of this handbook.

Mr. Henderson: I have offered this as G-28.

The Court: Received.

(Thereupon Government's Exhibit G-28, previously marked for identification, received in evidence.)

(Thereupon pamphlet marked Government's Exhibit G-29 for identification.)

Q. I show you Government's Exhibit G-29 for identification; and ask you what that is?

[fol. 189] A. This is the July, 1945 issue of the "Political Affairs" official theoretical organ of the Communist Party.

The Court: This is a monthly magazine, official organ, same as the Daily Worker?

The Witness: This is the monthly political organ.

Q. Will you examine this Government's Exhibit G-29 for identification, and find if it contains an article called "The Foster Letter"?

A. Yes, beginning on page 640.

Q. What Foster is this, what is his full name?

A. William Z. Foster.

Q. Did he later become National Chairman?

A. Yes.

Q. Of the Communist Party?

A. Yes.

Q. What was the nature of this letter, were you familiar with it?

A. I read it at the time I came back from the Army. He talks—

• Mr. McDonough: I object to it, if the Court please.

The Court: It is not necessary for him to tell what it is.

Mr. Henderson: I offer this in evidence.

(Thereupon Government's Exhibit G-29, previously marked for identification, received in evidence.)

[fol. 190] Mr. Henderson: I would like to read from this Exhibit 29, page 640; this is a letter to the National Committee, C.P.U.S.A.

"It will be noted that my letter to the National Committee does not discuss the matter of the dissolution, or reorganization, of the Communist Party into the Communist Political Association. When Comrade Browder proposed this liquidatory step several members of the National Board raised objections to it, and, of course, I opposed and voted against it. Nevertheless Comrade Browder was able to push it through in spite of this opposition. At the time of my sending the letter to the National Committee, things had proceeded so far that I considered the reorganization of the Party into the C.P.A. as virtually an accomplished fact. It had already been publicly announced and endorsed at the January meeting of the National Committee, and, in fact, the Party was already in the pre-[fol. 191] liminary stages of reorganization. Consequently, I felt that further agitation of the matter was hopeless for the time being and could only cause useless strife and confusion in our ranks. So I felt the whole question out of my letter to the National Committee. The immediate task, as I saw it, was for me to help to keep the C.P.A., in fact, if not in name, the Communist Party."

Mr. McDonough: Is that all?

Mr. Henderson: Yes, do you want to see it?

Mr. McDonough: I have had no opportunity to read that. Were you reading from a letter? If the Court please, I would—it to appear that Government Exhibit G-29 has Foster's letter to the National Committee, covering 15 double columned printed pages, and a note by William Foster covering an additional page.

Mr. Henderson: Which I just read from.

The Court: You offer in evidence only that part of the exhibit which contains the Foster letter and note.

[fol. 192] Mr. Henderson: That is right.

The Court: The record will show that part of the exhibit is in evidence.

Q. These things we have been talking about have been preliminary matters to the convention of 1945, National Convention?

A. With the exception of the resolution itself, which was convention business.

Q. Was there a state convention in 1945?

A. Yes.

Q. Where did that occur?

A. That state convention was held in Manhattan Center, 34th Street, west of Eighth Avenue, about a week before the regular National Convention.

Q. Were you a delegate?

A. Yes, I was at both conventions.

Q. Do you know what was accomplished at the convention?

A. Yes, a delegation was elected to the National Convention, urging re-constitution of the Communist Party, was the basis, and a lot of discussion on Browder's revisionism, about the revisionist signs and responsibility of other Party leaders around Browder. This was the first part of the State Convention.

Q. Was there a National Convention in 1945?

A. Yes.

[fol. 193] Q. Where was that held?

A. That was held in the Times Square area.

The Court: There were two, which one are you talking about?

Q. This is the regular National Convention?

A. No, this is emergency.

The Court: There were two.

The Witness: One was state, a week before the National Convention was held in the Fraternal Club House, I think it is, 43rd or 44th Street, between Sixth and Seventh Avenue, in New York City.

Q. What you had previously called the emergency convention?

A. Yes.

Q. Do you know the subject matter taken up?

A. Yes.

Q. And the action taken?

The Court: You have already proved it.

Mr. Henderson: I understand that.

Q. This was a meeting with respect to which the revision resolution was adopted?

A. One of the actions.

Q. What else?

[fol. 194] A. Report was given by William Foster, a Constitution was adopted, a National Committee was elected, a National Cadre, review was elected, these are some of the outstanding actions in the convention.

Q. Were the results of that convention consolidated in any publication of the Communist Party?

A. Key documents appear in the pamphlet "Struggle Against Revisionism," also in September issue of "Political Affairs."

(Thereupon booklet marked Government's Exhibit G-30 for identification.)

Q. Is this the issue of Political Affairs, Government's Exhibit 30 for identification, that you refer to?

A. Yes, this is the September issue, 1945, Political Affairs.

Mr. Henderson: I offer that in evidence.

Mr. McDonough: May I ask if this offer is to some particular article?

Mr. Henderson: Yes, it is going to be offered to show the article by William Foster on page 782, article by Williamson on page 800.

Mr. McDonough: Two articles?

Mr. Henderson: Yes. I am not going to read, but I am [fol. 195] going to offer draft and resolution contained in there.

The Court: Draft and resolution, that is the same resolution?

Mr. Henderson: That is right.

The Court: We already have that proof in, two separate instances. We have it twice already, the Daily Worker and the other exhibit.

Mr. Henderson: I do not propose to read it.

The Court: It is only a duplication. We have it twice already.

Mr. Henderson: Mark that in evidence.

(Thereupon Government's Exhibit G-30, previously marked for identification, received in evidence.)

Mr. Henderson: I will read from this exhibit, title called "The Struggle Against Revisionism" by William Foster, page 782:

"During the past several weeks we have been engaged in the frankest, deepest, and most self-critical theoretical analysis and practical political discussion in the history of our Party. Now, therefore, in its overwhelming major-[fol. 196] ity, our Party has become convinced that our policy for the past eighteen months was 'a notorious revision of Marxism.' The complete dissolution of the Party in the South shows where Comrade Browder was leading with his policy."

There is a foot-note, this was a report to the Special Convention held in New York July 26-28, 1945, which re-constituted the Communist Party of the United States of America. This same article goes on, I will just read the headlines of the paragraphs, but I would advise the jury this is all in evidence.

Page 782 "(A) Browder's line is a rejection of the Marxian economic doctrines."

"B. Browder's line is a rejection of the Marxian principles of the class struggle."

"C. Browder's line is a rejection of the Marxian concept of the progressive and revolutionary initiative of the [fol. 197] working class, and with it, the vanguard role of the Communist Party."

"D. Browder's line is a rejection of the Leninist theory of imperialism as the final stage of capitalism."

"E. Browder's line is a rejection of the Marxian-Leninist perspective of Socialism."

Page 788.

"Had the Duclos article been published a few months earlier, its reception in our Party would have been much less unanimous. As things turned out, however, it appeared at just the right time. The objective situation was ripe for it, and so, increasingly, were our Party leaders and members. Hence, the stage was all set for the sudden switch in Party opinion that has perplexed so many people. Our Party has suddenly reverted to its basic Communist principles."

Please note, my reading the title of the paragraph, there is the same subject matter. We would never finish if I [fol. 198] read it all.

"A. An ideological campaign against Revisionism."

"B. Re-establish the Communist Party."

"C. Refresh and Strengthen the Party Leadership."

"D. Re-establish Democratic Centralism."

"E. Strengthen the Party's Independent Role."

I think that is all.

[fol. 199] - Mr. McDonough: Are you finished? I think the record should show that the article headed "The Struggle Against Revisionism" by William Foster is an article of 17 double printed magazine pages, in the interests of accuracy that sub-heading "D", from which Mr. Henderson read "Browder's line is a rejection of the Leninist theory of imperialism as the final state of capitalism."

"Comrade Browder, in his books and speeches, paints a utopian picture of a world capitalist system, not moribund, but vigorous and progressive, specially in its American section—a world capitalist system about to enter into a period of unprecedented expansion. It is a denial of the general crisis of the capitalist system. Browder believes that under the leadership of his 'enlightened' American monopolists, the imperialist ruling classes in this and other [fol. 200] capitalist countries will peacefully and spontaneously compose their differences with each other, with the U.S.S.R., with the liberated countries of Europe, and with the colonial and semi-colonial countries, without mass struggle. This is the bourgeois liberal notion that the epoch of imperialism is past. It conflicts fundamentally with the Leninist theory of imperialism as the last stage of a decadent capitalist system."

The last sentence of the first paragraph "Complete dissolution of the Party in the South shows where Comrade Browder was leading with his policy," not "this policy".

Mr. Henderson: I adopt that. I do not see much difference. I would like to read some parts of an article in the same exhibit by John Williamson.

Q. Do you know what the capacity of John Williamson was in the Communist Party in September, 1945?

A. In September, 1945, he was a member of the National Committee of the Communist Party, a member of the National Board of the Communist Party, and a member of [fol. 201] the secretariat of the National Committee of the Communist Party.

Mr. Henderson: Page 800. I just want to read the note. "This is a report to the Special Convention of the Communist Political Association, held in New York, July 26-28, 1945, which reconstituted the Communist Party of the United States of America." The title is "The Reconstitution of the Communist Party."

Page 805:.

"4. The fourth prerequisite for a Communist Party is to have firm roots in the working class and to guarantee that industrial workers comprise the majority of its members. Successful leadership and ability to influence the course of our nation require above all that we maintain and greatly extend our ties with the working class, especially in the basic industries. I understand that some people have posed the question somewhat in this manner: under [fol. 202] Browder's leadership, we became a political force and influenced the life of our nation, but under Foster's leadership we will merely be a sounding board for the working-class sentiments. Obviously this is wrong. Under Browder's leadership, as a result of our liquidationist practices, we became less an influence in the nation than before, precisely because we weakened our connections with the most important force within our nation—the working class. In actuality, we were influenced by other class forces in the nation. To influence successfully the political life of the nation, the center of gravity of the Communist organization should be in the main cities and especially in the centers of large industry. This means our strongest roots must be among the industrial workers—particularly in the steel, auto, coal, marine, electrical equipment, shipbuilding and metal industries. This is not [fol. 203] so today. Being slow in recognizing changes in the situation and failing to quickly adjust our slogans and tactical line to new problems and conditions, we many times, even if only temporarily, forfeit leadership to the Reuthers and other radical phrase-mongers. However, the Party

has great reserves among the workers of basic industry, and if we work correctly we can win their confidence and re-establish our leadership."

Page 810:

"Because we erred so heavily on neglecting the time-tested Communist principle of democratic centralism, we must emphasize that these principles are embodied in Articles VI and VII. Let me restate briefly our concept of democratic centralism.

"Democratic centralism is the method of functioning of the Communist organization which combines the maximum democracy in the shaping of policy and the election of all [fol. 204] leadership with sufficient centralization of committee authority to guarantee immediate reaction to problems and speedy mobilization of the entire membership and organization around the fulfillment of key tasks. Democratic centralism thus guarantees that all leading committees are elected by the membership and all basic problems are discussed and shaped by the membership. The elected leadership has the responsibility to report systematically to the membership on the actions and decisions taken by the higher committee. But once decisions are made in the higher committees, these decisions become the line of activity for the membership as a whole."

Then at page 814.

"We Communists must adopt a program of concentration tasks as part of that necessary fixed course from which [fol. 205] we must not deviate. This means:

- "1. To help organize the influence of the working class and its organizations for speeding victory over militarist Japan, for maintaining unity of the Big Three on the basis of the Teheran and Yalta agreements for rooting out all fascist and reactionary influence at home, for defeating all provocations of employers aimed at breaking the unity and organization of labor, and for stimulating the organization of the unorganized. Therefore, we must concentrate all Party work in such a manner as to have our strongest roots and decisive membership and influence among the workers in the basic industries and large shops.

"2. We must activate the maximum number of Communists in these concentration areas, among the masses and in workers' organizations. To achieve this, we shall shift forces, including key national forces, into the leadership [fol. 206] of concentration districts and areas."

The Court: We will recess for ten minutes.

(Short recess.)

(After short recess.)

Q. Following this convention of 1945, as I understand it, the Communist Party resumed its old name "Communist Party of America."

A. That is correct.

Q. Following this convention can you state what program the Party entered upon?

A. The Party was reorganized, a concentration policy was pursued, a policy of re-education program was carried out. These were the three programs right after the re-constitution of the Communist Party.

Q. Did the official organ of the Party which you described as "Political Affairs" contain any directives directed to the membership of the Communist Party in its future action?

A. Yes, this policy is reflected in articles in "Political Affairs".

Q. Did you participate in this three-pronged program?

A. Yes, I participated in all three phases, re-education of the Party membership; reorganization of the Party, also concentration policy.

[fol. 207] Q. You mentioned "Political Affairs," did you refer to this as assistance in carrying out the three-pronged program?

A. Political Affairs speaks about reports and problems pertaining to all three phases.

Q. At that 1945 convention was there a constitution adopted?

A. Yes.

(Thereupon documents marked Government's Exhibits G-31 through G-39, inclusive, for identification.)

Q. Will you look at these exhibits G-31 through G-39, which appear to be copies of the paper "Political Affairs"

or magazine, are these the magazines you used in this period, teaching program following the 1945 convention?

A. These are Political Affairs that reflect the activities in the Party on the re-organization problems, re-education problems and concentration policy, problems in the Party.

Q. All of these are official organs of the Communist Party of America?

A. Yes, the last three issues of "Political Affairs" are after the 1948 convention of the Communist Party, and they are separate.

[fol. 208] Mr. Henderson: I offer in evidence Exhibits G-31 through G-39.

Mr. McDonough: Are they offered with reference to any particular article, or in toto?

Mr. Henderson: They are offered as a particular article.

The Court: In each one are you designating the article?

Mr. Henderson: That is right, I will read them.

The Court: You will read parts of them?

Mr. Henderson: That is correct.

The Court: All right.

(Thereupon Government's Exhibits G-31 through G-39, previously marked for identification, received in evidence.)

Mr. Henderson: With the Court's permission and Mr. McDonough's consent, I am going to ask Mr. White to read some of these articles.

Mr. McDonough: May the date of the particular article be designated?

The Court: Yes, that is the only way we will know, so the record will show it.

Mr. Henderson: Reading from Government's Exhibit G-31, article on page 1109.

[fol. 209] Mr. McDonough: What is the date of that?

Mr. Henderson: December, 1945. "New Organizational Problems of the Communist Party. Report to the meeting of the National Committee of the Communist Party, U.S.A., on November 17, 1945. Page 1121.

Mr. McDonough: I don't have anything to follow you.

Mr. Henderson: Page 1121, last paragraph.

"In commenting upon the functioning of our Party, I wish to stress the fight for the most systematic and earnest

study of Marxism-Leninism in Party ranks from top to bottom, in the course for our mass work. We have established a National Education Department which has started to function and has projected a program of activity, including seven short-term school. We know that our work in this field is still inadequate; but we have guarantees in the leadership of the Department that the work will be extended and improved. The planned activity must also [fol. 210] be followed through in the district, where in many cases there are not yet functioning educational departments and in some not even directors. We recommend:

"1. The organizing of a national educational conference in the coming period whose objectives will include:

a. a systematic plan of club education and training;
 "b. the organizing of city and district schools, full-time and part-time, supplementary to the national schools;

"c. a program of self-study, with some organizational check-up within the Party to guarantee that it is carried through;

"d. a system whereby every full-time Party leader becomes a teacher;

"e. proper utilization of the Marxist-Leninist classics and theoretical pamphlets;

"f. the organization of two three-month full-time national training schools during 1946.

[fol. 211] "2. The organizing, during 1946, of an appropriate 100th anniversary celebration of the founding of Marxism, with publication of appropriate books, a nationwide series of lectures, exhibitions, and other related activities.

"3. The launching of an organized campaign throughout the Party and in the press, to encourage the study and deepening of the understanding of Marxist-Leninist theory and its application to the conditions of the United States, and to publish new material towards this end.

"4. To improve the theoretical content of Political Affairs and to extend its circulation, as well as to institute the publication of theoretical material in the Daily Worker."

—Mr. McDonough: May refer to that before Mr. White is finished? May it appear that the article just quoted was

one article in the exhibit by John Williamson and part of [fol. 212] an article of 19 double column pages.

Mr. White: Reading from Exhibit 32: "Political Affairs, February, 1946, page 99, entitled "Leninism and Some Practical Problems of the Postwar Period," by William Z. Foster, commencing on page 107:

"The fourth major phase of Leninism that needs stressing as an immediate necessity of the American working class is the earliest possible building of the Communist Party into a mass organization.

"Lenin was the great theoretician, organizer and practical leader of the Communist movement. It was he above all other Communist leaders who explained the leading role of the Party as the Party of the working class, worked out its practical structure, and taught how it must function in action as the vanguard of the working class and the leader of all the progressive forces in the nation.

[fol. 213] "Even since its foundation in 1919 our Party has been building upon the basis of the principles worked out by the great Lenin. The Party has made much progress. We now have a substantial organization, with a large mass following. Moreover, during its 26 years of life, the Party has played an honorable and effective role in every struggle of the workers and of the people as a whole. We Communists may well be proud of our Party's record during the past three tumultuous decades of our nation's life.

But the time has now arrived when the Communist Party must be expanded on a far larger scale. The workers, and the democratic masses generally, of this country are facing a whole series of urgent problems for whose democratic solution a strong Communist Party is indispensable. In the foregoing pages a few of these problems have been listed, including the development of a mass [fol. 214] understanding of American imperialism, the building of the great national and international democratic coalition, and the unfolding of a socialist perspective by the labor movement. With these specified major problems are connected, of course, a host of individual questions, such as the protection of the workers' living standards, the development of worker-veteran cooperation, the defense of the rights of the Negro people, etc. In the

vast task of winning the peace, in consolidating the people's victory in the anti-fascist war, a strong Communist Party has become a question of immediate necessity."

Mr. McDonough: Here again, I would like it to appear that the article from which counsel has read is part of an article by William Z. Foster covering ten and a half double-column printed pages.

Mr. White: Reading from Government's Exhibit G-33, Political Affairs, September, 1946, an article commencing [fol. 215] on Page 810, ending on 826, entitled "Improve and Build Our Communist Press, The Next Step in Party Building," by John Williamson. Reading from page 817:

"In accord with the broad concept of Party building outlined at the last meeting of the National Committee, we wish this committee meeting to center its attention on two other aspects of Party building. The first of these is the role and effective building of our press; the second is the struggle for the extension of the Marxist-Leninist education of our membership and leadership, the energetic struggle for Marxist-Leninist ideology among the workers. This latter question will be dealt with in detail in a separate report by Comrade Weiss.

"Why do we place the question of the press on our agenda? Because there is a great need for our Party to learn once again what Lenin meant when he said that 'a [fol. 216] Communist newspaper is not only a collective propagandist and collective agitator, but also a collective organizer.'

"Our press is an important aspect of the independent, vanguard role of the Communist Party. The fight to build the circulation of our press is part of the fight to bring forward the face of our Party in the public political life of our country. The press is our chief propaganda weapon in the struggle against the imperialist policies of monopoly capitalism in the field of foreign and domestic policy.

"It is the main instrument through which we bring the program and policies of our Party to the people, not just occasionally, but regularly, 365 days a year. It is, furthermore, an important medium through which to present correct working class tactics, avoiding the twin pitfalls of right opportunism and left sectarianism. Our press, in [fol. 217] fact, is one of the chief links between the Party

and the labor and democratic masses. The manifold increase of the circulation of the press is, therefore, an important aspect of completing the re-establishment of our Party as the Marxist vanguard of the American working class."

Mr. McDonough: Here again may it appear—

The Court: I think he recited the pages when he started to read.

Mr. McDonough: I wanted the record to show. These photostatic copies do not—

The Court: At the start you were told where the article started and where it ended and how many pages. I think that is a good idea. If you do it, he won't have to do it.

Mr. White: Reading from Government's Exhibit G-34, "Political Affairs, September, 1947," article commencing on page 794, ending on page 812, entitled "Marxism and American Exceptionalism," by William Z. Foster, commencing on page 809, the second paragraph.

[fol. 218] "COMMUNIST MANIFESTO IS VALID FOR THE UNITED STATES."

"American monopoly capitalism is not unique, a thing unto itself, with its own internal laws that are 'exceptional' to the capitalism of other countries. On the contrary, it is flesh and blood, an organic part, of the world capitalist system, and it is subject to all of capitalism's inherent economic and political contradictions. American capitalism, despite its relatively greater strength, which is bred of its temporary advantages over the capitalism of other countries, is inexorably traveling the same path to decay as capitalism in Europe and elsewhere. The laws of capitalist growth and decline, worked out by Marx and Engels in the Communist Manifesto, apply to the capitalism of the United States, as well as to that broken-down Europe."

Mr. McDonough: I have had no previous opportunity to [fol. 119] study and see them to carry out the opportunity which the Court has given me to add to these articles at the present time or read any of the parts. I just don't want to delay the Court or take the time of the jury, except for pointing out these articles. That is all I can do at this time.

Mr. White: Reading from Government's Exhibit G-35, "Political Affairs, November, 1947," article commencing page 1040 and ending on 1046, entitled "Toward the 100th Anniversary of Marxism," "Independent Self-Study of Marxism," by William Weinstone. Reading on page 1041.

"For a basic introductory study of Marxism-Leninism, a foundation on which to build as one goes along, the student should begin with the following: Marx and Engels' Communist Manifesto; Engels' Socialism, Utopian and Scientific and 'Speech at the Graveside of Karl Marx' (in Karl Marx, Selected Works, Vol. LX); Leontiev's Political Economy; Lenin's State and Revolution and Imperialism, [fol. 220] the Highest State of Capitalism; Marx' The Eighteenth Brumaire of Louis Bonaparte and the Civil War in France; Stalin's Foundations of Leninism (the chapters on theory and the Party); Dimitroff's The United Front Against Fascism; and Marxism-Leninism vs. Revisionism by Wm. Z. Foster and others."

Page 1042.

"For intermediate study the following are suggested. For a deeper overall view of Marxism, the student should read Engels' Anti-Duhring. For further historical material on the features of capitalism, the student should read The Origin of the Family, Private Property, and the State; The Peasant War in Germany, and The Housing Question—all by Engels. For Leninism, the student should study Stalin's Foundations of Leninism; The History of the C.P.S.U.; Lenin's What is to be Done; Lenin's Collapse [fol. 221] of the Second International (in Lenin, Selected Works, Vol. V.); Lenin's Left-Wing Communism; Stalin's Leninism (Selected works in a single volume); Stalin's essay entitled 'Marxism and the National Question' (in the volume of the same name); James S. Allen's The Negro Question in the United States (revised edition in preparation; I shall have more to say about American works later); and Stalin's The Great Patriotic War. The student should study Marxian philosophy by reading Engels' Ludwig Feuerbach and the letters by Marx and Engels on historical materialism, which can be found in Vol. 1 of the Selected Works of Karl Marx. For an understanding of the economic doctrine, the student should read Marx'

Wage-Labor and Capital (with Engels' introduction), Value, Price and Profit, and Vol. 1 of Capital."

To go on on page 142:

"At this advanced stage of study, it is possible to follow [fol. 222] one of two methods. One method is to use the History of the C.P.S.U. as a text and to read all the works of Lenin and Stalin for the period covered. The value of this method, which has been recommended for advanced study of the history of the C.P.S.U., is that the student can evaluate the works in relation to the conditions in which they were written. At the same time, the student reads works that are rich in commentary and explanations of the writings of Marx and Engels."

The bottom of page 1043:

"What if one is an active trade unionist and wishes to grasp the Marxist teachings on the subject? Is it necessary to wait until one has mastered all main branches of the science first? No! With a general knowledge of Marxism as a guide, one can make a list of books on the subject studying such material as Lozovsky's Marx and the Trade [fol. 223] Unions; Engels on American and British unions in the Marx-Engels' Correspondence; Lenin on the trade unions in What is to be Done and in Left-Wing Communism, Lenin on Britain, and Ralph Fox's Class Struggle in Britain, 1880-1923; Stalin on the unions of western Europe and America in his report to the 14th Party Conference of the C.P.S.U., and in his talk with the American Labor Delegation (in his volumes on Leninism); Lenin's debate with Trotsky and Bukharin on the role of unions (Selected Works, Volume IX); Strategy and Tactics (consisting of excerpts of Marxist writings published by International Publishers); Foster's Selected Writings on American Trade Unionism; Foner's History of the Labor Movement in the U.S., etc. A complete study of trade unionism requires also readings on international trade union experiences of the past generation, which can be found in bound volumes of International Press Correspondence [fol. 224] and also in bourgeois works on American trade unions."

Mr. McDonough: I would like to read one final para-

graph of that sub-heading, if I may, which is the last paragraph following what has been read.

"In the same way, one can study the national and colonial question, the state and democracy, the third party question, the question of nationalization, the Party, or other subjects. This is a method that takes counsel with Marx and Lenin on the problems of daily work while continuing with the task of mastering the whole science."

Mr. White: Reading from Exhibit G-36, March, 1948, article commencing page 238, ending on page 250.

Mr. McDonough: I don't have that one.

Mr. White: "Some Aspects of Party Work."

Page 248:

"CONCENTRATION.

"I now want to discuss another aspect of improving the [fol. 225] quality of our work—the question of concentration.

"The fight to make concentration a system of work is the starting point for the effective implementation of our Party's basic policies.

"Our concentration policy should run like a red thread through all phases of Party work. We propose to re-establish the application of our concentration policy as a system of Party work.

"We must say, self-critically, that there has been a lag in our concentration policy, both nationally and in districts. Here, at this National Committee meeting, we have the task of taking up this question in a new way. For the stationary position of our working class membership already gives some danger signals. The whole question of concentration must be understood as part of the fight to shift the majority of our membership to a working-class base.

[fol. 226] "Our position in a number of basic industries has been weakened by our failure aggressively to pursue a concentration policy. I have in mind particularly the packing, auto, railroad, and maritime industries. Because our concentration policy was inadequately applied, it did not result in the over-all strengthening of our Party, politically and organizationally.

"Therefore we must now work in a different way, in order to build our Party in key industries and key towns to establish centers of Party influence and strength.

"I think our Party must define new concentration points in a number of important industries. Here, our aim should be to strengthen existing shop and industrial clubs, and to build new clubs.

"Finally, on this point, we propose that the National Organization Department map out a national concentration [fol. 227] policy, based on this discussion and following this meeting.

BUILDING OUR PRESS.

"And now a few words about the question of our press, which is not unrelated to the problems of concentration.

"In a general way, we can say that the further growth of our Party depends on the building of our press, of the circulation of the Worker and Daily Worker."

Mr. McDonough: I would like to read two paragraphs following what Mr. White read on page 249. These are the two paragraphs immediately following the conclusion which Mr. White read ending with the words "depends on the building of our press, of the circulation of the Worker and Daily Worker."

"More than that, our success in expanding the circulation of our press will have an effect on the development of the anti-war, anti-monopoly mass movement, including the new third-party movement.

[fol. 228] "When we speak of building the circulation of our press, we mean increasing its influence as an organizer and propagandist. This is of special importance in the present period. For, ours is so far the only national daily English press that supports the Wallace ticket and actively campaigns for the third party."

Mr. White: Reading from Government's Exhibit G-37, April 1945, page 35, ending on page 47, entitled "IMPROVE THE MARXIST-LENINIST CONTENT AND METHODS IN PARTY ACTIVITY."

Commencing reading on page 37, second paragraph, "Because in 1945 we returned to Marxism-Leninism as our theory and guide, our Party today is able to meet these

attacks. We are learning how to apply this science of the working class to our American problems and conditions. Our Party today is rebuffing the attacks and is ready to go into future struggles with confidence, because [fol. 229] we have learned to use the Leninist method of self-criticism—the method of boldly, resolutely, and publicly attacking and correcting all weaknesses as they appear. This we will continue to do.”

On page 40.

“Joseph Stalin, in the History of the C.P.S.U. states that Lenin in his ‘What is to be Done?’ ‘brilliantly substantiated the fundamental Marxist thesis that a Marxist party is a union of the working-class movement and socialism.’ The mastery of this thesis, as a guide for the everyday activity of the Party, is a challenge and a fundamental requirement for all organizations of the Party.

“A Party, or a member of the Party, does not give life to this fundamental Marxist thesis by adding a slogan ‘for socialism’ at the end of a speech or leaflet; this ‘union’ is not made by publishing literature about socialism in the abstract. And of course this ‘union’ is not made by the [fol. 230] reasoning that ‘socialism is not on the order of the day in America,’ and so we can leave it out of our present-day activities and wait until history will place it on the order of the day in some distant future. The first is an error flowing from a lack of Marxist understanding; the second is a rejection of the struggle for socialism. The result of both are the same—no struggle for socialism.

“The fundamental Marxist thesis that the ‘party is the union of the working-class movement and socialism’ must be the content, the very essence of our leadership of every struggle at all times. This means giving a Marxist content to all struggles for partial demands and reforms. It means making the connection between the present struggles and the future, the part with the whole. This idea is not something new. The Party has stated it before. But without periodic reemphasis, additions, and continuous [fol. 231] struggle for improvement in application, a policy becomes musty, is left on the shelf and forgotten or used only for abstract lectures on Sunday.”

Page 44, right-hand column:

"Industrial concentration gives content to the Leninist concept of the hegemony of the proletariat in all phases and stages of the struggle. If we agree with Lenin that 'only a class like the proletariat could rally around itself all the forces discontented with capitalism,' then we must show that agreement by applying the method of industrial concentration in leading and winning the proletariat."

Page 45, "Industrial concentration is the basic method and approach toward everything we do. Issues and tactics will change, but the role of the working class in general and of the workers in basic industry in particular is a constant, permanent element in all industrial concentration plans or objectives. Industrial concentration is the method of work of the Party of a 'new type'."

"At the core of the mass work of the Party is the objective of winning the majority of the working class to a class-struggle policy, and of isolating those leaders of the trade unions who are pursuing the policy of class collaboration, of supporting all the reactionary wage of Wall Street. Organically related to this central mass task, we have a number one must—building and rooting the Communist Party in the main industries and industrial centers."

Reading from Government's Exhibit G-38, September 1949, page 1, "OUR PARTY'S THIRTIETH ANNIVERSARY."

"On September 1st, this year, our Party will be thirty years old. It was born out of the struggle against imperialist war in the present historical epoch—the epoch [fol. 233] of the downfall of capitalism and the birth of Socialism. It grew and matured in all the major progressive struggles of the American people and its working class in three decades of the most crucial period in the world's history. It became established firmly and irrevocably as the American party of Marxism-Leninism, as the revolutionary vanguard party of the working class and its allies all the exploited and oppressed."

Same edition, another article.

Mr. McDonough: May we have the number of the pages?

Mr. White: Commencing on page 1, ending on page 13.

By Mr. White:

Q. Can you tell us who Alexander Birtelman was at that time in 1949?

A. 1945 to 1948 he was a member of the National Committee, in 1949, he was Party Leader in the Jewish movement and General Secretary of the Jewish Bureau of the Communist Party.

Mr. White: Same exhibit, commencing page 71, ending on page 81:

[fol. 234] "AN IMPORTANT CHAPTER IN THE PARTY'S HISTORY OF INDUSTRIAL CONCENTRATION, by William Weinstein."

Commencing on page 80:

"FOR A RE-INVIGORATED CONCENTRATION POLICY.

"With the decisive rejection of revisionism in 1945, the Party was definitely reconstituted on a Marxist-Leninist basis. Inevitably the Emergency Convention of 1945 stressed the need for restoring the working-class base and taking up industrial concentration work again. This central policy received special emphasis at the 1948 convention in the leading reports of Comrades Foster, Dennis and Winston. Comrade Winston stated categorically that 'the central task before the Party is the fight for shifting the main base of our Party to the working class. This cannot be done unless we turn the face of the entire Party to the workers in the factories.'

[fol. 235] "This strong emphasis on turning the face of the Party to the shops and factories in the nation's basic industries, and on building the Party among the industrial workers, is an integral part of the reconstituted Communist Party's program and policies. Its immediate program is directed to solidifying the forces of labor for winning a greater measure of economic betterment, of strengthening and unifying the trade-union organizations, for promoting labor's independent political action and building the Progressive Party, and for labor's assumption of its leading role in an all people's coalition against war and fascism. This program cannot be realized without

the effective vanguard role of the Party, for which, industrial concentration is indispensable.

Mr. McDonough: May I have an opportunity to look at this letter?

Mr. White: From Government's Exhibit G-39, Political Affairs, December, 1949, commencing on page 1 and ending [fol. 236] on page 13, entitled: "STALIN ON HIS 70TH BIRTHDAY, by Alexander Bittelman."

Reading at page 8.

"A theoretical contribution of Stalin which, like the Foundations of Leninism and his other theoretical works, ranks with the fundamental theoretical and philosophical works of Marx, Engels and Lenin is the History of the Communist Party of the Soviet Union. The History is a fountain-head of Marxist-Leninist knowledge—theory, ideology, strategy, tactics of organization. It is a guide to Marxist-Leninist action. It embodies the theoretical and programmatic positions of Marxism-Leninism."

Same page, in second column:

Together with Lenin, Stalin created and built the Bolshevik Party, the party of a new type. Developing further the Marxist-Leninist theory of the party, Stalin [fol. 237] demonstrated the objective need for and the nature of the party of a new type, without which the proletariat cannot liberate itself from capitalism. In the History of the Communist Party of the Soviet Union, Stalin writes:

"The History of the Party teaches us, first of all, that the victory of the proletarian revolution, the victory of the dictatorship of the proletariat, is impossible without a revolutionary party of the proletariat, a party free from opportunism, irreconcilable toward compromisers and capitulators, and revolutionary in its attitude toward the bourgeoisie and the state power (page 353)."

Page 13:

"American Communists will celebrate Stalin's seventieth birthday together with large masses of the American people. And in doing so, they will remember that, as the vanguard of the American working class and people, they [fol. 238] have additional and special tasks. These are:

to intensify greatly their efforts to master the theory of Marxism-Leninism, the teachings of Stalin; to unfold more skilfully and effectively their struggle for the masses, the policy of the united and people's front against fascism and war, for peace and democracy; to give life to the Stalinist principle of—always with the masses and at the head of them; and to strengthen the Communist Party—ideologically, politically and organizationally—and to build it as a true, mass vanguard of the American working class and of the American people.”

Mr. McDonough: Do you mind waiting a moment?
Mr. White: Excuse me.

By Mr. Henderson:

Q. I just wanted to ask you one thing. You have used the expression “Little Lenin Library”?

A. Yes.

Q. Looking at the exhibit 30, “Political Affairs”, from which Mr. White read some excerpts, I notice out in the front under the title, this was issued September, [fol. 239] 1945, “More Timely Than Ever—Little Lenin Library,” there is 28—29 volumes set out. Are those the same books of the Little Lenin Series that you referred to?

A. Yes; with this understanding, that the publication here is 1945, September, whereas we discussed the Little Lenin Library in 1934, 1935, 1936. Whatever volumes were published after 1936 may appear in 1945. Some of them may not have been published, but that is the Little Lenin Library.

Q. What is that “New Century Publishers, 832 Broadway”?

A. New Century Publishers is one of the publishing arms of the Party that specializes in pamphlets and publishes political affairs.

Q. Is that all they print, Communist literature?

A. Yes, but if they can get a contract from the outside, they grab it, but their publishing “Political Affairs” and pamphlets published by the Party, whereas books are published in another place.

Q. What is the name of that one?

A. International Publishers.

Q. New York City, too?

A. That is right.

Q. I will ask you one more question about this book. I notice on the first page of this book "Political [fol. 240] Affairs, as far as I have been able to discover, the title is "Political Affairs, a Magazine Devoted to the Theory of Marxism-Leninism." Is that common in each issue?

A. From time to time the format is changed, new editorial names may appear, and new slogan appear with a new form, but both "Communist" in 1930 and "Political Affairs" which succeeded were the official organ of the Communist Party devoted to the theory of Marxism and Leninism.

Q. As I understand it there was this period of reconstitution, three-pronged program, re-education and concentration—

A. Reconstitution.

Q. What job did you personally undertake during the period of reconstitution, give us your position?

A. In 1946, I was assigned by the Party to make a survey and bring into one organization all new Communist Party members who were members of the unions, building trades, such as painters, carpenters, bricklayers, plumbers, iron-workers, electricians, so in 1946, I was the industrial organizer of the building trades in New York.

Q. In New York City?

A. New York City. That was my participation in this [fol. 241] reorganization where the Party established industrial sections in the political association. We did not have them. They were similar industrial sections in fur, in other A.F. of L., food workers, butchers bakers, other industrial section of the C.I.O., in the electrical union of the U.E., in the professions, there were a whole slew of industrial sections organized in the Party. That was my participation as head of the industrial section.

Q. Whom did you take your direction from to do that?

A. First of all, Albert Simon, of the New York State Organization, he was Hal Simon, and Bob Thompson.

A. Who was he?

A. State Chairman of the Communist Party.

Q. How long did he last as Chairman?

A. He was still Chairman at the time I left the Communist Party. Bill Norman, he was the Executive Secretary of the New York State Organization of the Communist Party.

Q. Was that activity the prong which you called "Concentration"?

A. No, that was re-organization.

Q. What else did you do? Were you paid for these efforts?

A. I was a full-time functionary at that time.

Q. The Party paid you?

[fol. 242] A. Yes.

Q. What else did you do during this period after the reconstitution?

A. As I testified yesterday, for a short while I was sent into the concentration region of New York City, which was the New York waterfront, Chelsea Region, from the Battery to 59th Street and west side of Manhattan. The reason Chelsea was a concentration region, because the main concentration task given to New York State by the National leadership was transport, on this west side of New York we had Railroad, New York Central freight yards, Pennsylvania Railroad Station, we had all the teamsters sheds from Greenwich Village up on the west side, we had all longshore on the west side—

Mr. McDonough: I object to this, repetitious.

The Court: Objection overruled.

The Witness: Seamen, the bulk of transportation problems, transport in this region, and New York was divided into this region. This was Region 1. I was thrown in there for a few months to start this region going.

Q. Who told you to do that?

A. Same people, plus George Block.

[fol. 243] Q. What was his job?

A. He was County Chairman for New York County at the same time in this period I was teaching in a number of classes, Party classes, Marxism, Leninism, Political Economy and Party Organization, Party Structure, Democratic Centralization and Discipline.

Q. We have entered into evidence a great number of booklets, are those the ones you were using during this teaching period?

A. They are some of the articles that reflect Party problems around these three key problems, re-organization, concentration and education.

Mr. Henderson: I was going to start reading again.

The Court: We might as well adjourn now to 2:15.

(Whereupon a recess was taken until 2:15 o'clock P.M.)

[fol. 244] AFTER RECESS, 2:15 o'clock P.M.

APPEARANCES: Same as before noted.

JOHN LAUTNER, resumed the stand and testified further as follows:

Direct Examination, (resumed)

By Mr. Henderson:

Q. Mr. Lautner, following the reconstitution of the Party in 1945, has the Communist Party of America, you have given us some information about your activities in certain areas of the three-prong program. What did you do with respect to teaching during that period, did you teach classes for the Communist Party?

A. Yes.

Q. I think you said you taught classes in the painters union; is that correct?

A. No.

Q. What was your teaching?

A. I was teaching a class of Communist Party members in the painters union, not in the painters union.

Q. There were a class of Communists in the painters union?

A. Yes, sir.

[fol. 245] Q. You said fur and leather unions?

A. Yes, Communist Party, leaders in the fur and leather union.

Q. What else?

A. Communist Party and Union Leaders in the baking industry, section functionaries in the Communist Party in New York County, branch organizers, section functionaries.

Q. Who designated you to be a teacher?

A. New York State School Commission and the New York County School Commission, joint project.

Q. Those were functioning under Thompson?

A. Thompson was State Chairman of the Communist Party and head of it, the School Commission in New York State, Alberto Moran.

Q. Mr. Lantner, I would like you to describe the building in which the State organization of the Communist Party was housed in 1945, where was it located?

A. It was located in a loft building on 12th Street, east of University Place. The number of the building was 35 East 12th Street, and the building extended from 12th Street all the way to 13th Street. It was a block, and the address on the 13th Street side was 50 East 13th Street. It was a nine-story high building, all kinds of party in-
[fol. 246] stitutions in that building from the ground floor up.

Q. The entire building was divided to various factions of the Party?

A. Various institutions around the Party and in the Party. Daily Worker offices were there, Daily Worker printing presses in the basement, Daily Worker linotype machines, Daily Worker editorial offices, Morning Freiheit printing presses, editorial and printing offices, Party literature department was in the same building, New York County Organization of the Party, New York State Organization was in the same building, National offices of the Communist Party were in the same building, Editorial Staff of "Political Affairs" was in the same building. All those institutions around the Party were housed in 35 East 12th or 50 East 13th, a back way on the 13th Street side.

Q. You said Party literature director had his office?

A. Party literature had its warehouses, literature in the building.

Q. That was a library?

A. There were a number of libraries in the building on all floors. There is a library on the 9th floor, there is a library on the third floor, but these were not extensive libraries. There was one library to 1945, moved out of there [fol. 247] to the Jefferson School.

Q. Where was that?

A. That was 16th and 6th Avenue.

Q. Was that an extensive library of Communist work?

A. When I was in it it was. It was known as the Rutenberg Library at one time.

Q. The New York State Headquarters of the Communist Party was on what floor?

A. Fifth floor.

Q. That was led by Thompson?

A. That is correct.

Q. You had an office, did you, after 1945?

A. Yes.

Q. Who else had offices as part of the state unit?

A. On the fifth, there were the following offices, Bob Thompson, Bill Norman, Hal Simon, a Board room, Amter's office, May Miller's office, Bob Woods had his offices there, Tony Lombardo had his offices, my office, William Weinstone's offices, Sam Goldman's office.

Q. What was Sam Goldman's job?

A. He was part of the New York State Educational Party or Commission. He was specifically charged with education propaganda.

Q. Is that the same Sam Goldman who used to be sub- [fol. 248] district leader in Buffalo?

A. Yes.

Q. He was the same man replaced by John Noto?

A. I don't know who he replaced. Then Alberto Morrow's office, stockroom or mimeograph room where materials were printed, of the operating room staff of the New York State Organization of the Party.

Q. What was there with respect to the National office and the personnel in that same building?

A. On the 9th floor had the National Headquarters offices of William Z. Foster, Eugene Dennis, John Williamson, Henry Winston, Betty Gannet, Elizabeth Flynn and some other offices.

Q. Who was Betty Gannet?

A. Betty Gannet was assistant-National Organizational Secretary.

Q. Had you known her before she undertook this job?

A. Oh, yes.

Q. What former job did she have?

A. First time I met her she was in the school in Canada in 1931, but at that time I knew her as Betty Yaros.

Q. Did you ever know her to be in Buffalo?

A. No.

Q. Following this period of re-constitution was there anything prepared by Party Headquarters in which you [fol. 249] had an office in the nature of an educational outline?

A. Yes.

Mr. Henderson: Mark this.

(Thereupon document marked Government's Exhibit G-40 for identification.)

Q. Will you look at this Exhibit G-40, and tell me what it is?

A. This is a photostatic copy of an outline on fundamentals of Marxism issued by the National Educational Commission, Communist Party, U.S.A., 35 East 12th Street, New York City.

Q. That National Educational Commission was housed in that building you described?

A. That is correct.

Q. When was that issued, do you know?

A. Yes.

Q. When?

A. In 1946.

Q. Were you given a copy of that as an aid and guide to your teaching?

A. Yes, I had a number of copies. I had a number of copies of this outline, and also some outline reproduced in New York State Educational Commission, except that they had a different form on the front page.

[fol. 250] Q. You mean the front page?

A. Yes.

Q. As I understand it the State Communist Organization reproduced contents of this educational bulletin on its own label?

A. That is correct.

Q. What did they do with it?

A. In 1947, they sent it out to all Party organizations up to Canada—.

Mr. McDonough: I object to this, unless this witness was the person who mailed them out. I think your Honor appreciates in the great scope of this testimony, which I know the Court has admitted on the question of teaching, there might be a great deal of hearsay getting into it.

The Court: Getting right down to your objection, certainly I would not restrict it to the person who mailed them unless you can demonstrate he was in a position to know.

Mr. McDonough: I still object. It is information through hearsay sources.

The Court: He must establish he had knowledge.

[fol. 251] Mr. McDonough: May I make my position—

The Court: There is no question pending at the moment. I will strike out the answer in so far as it appears up to now there is no question pending.

Mr. Henderson: I spoke to Mr. McDonough, this is a photostat. I will have the original, but rather than wait he has consented to receive that.

Mr. McDonough: I won't raise any question on that. I will consent that this be received. My objection was taken this morning.

The Court: You are only consenting that the photostat be used in place of the original.

Mr. McDonough: That is right.

(Thereupon Government's Exhibit G-40, previously marked for identification, received in evidence.)

Q. Will you take that Mr. Lautner. You said that was issued in 1946?

A. That is correct.

Q. Are you familiar of your own knowledge with the State Educational Section of the Communist Party reproduced that in quantity changing only the cover [fol. 252] sheet?

A. That is correct.

Q. Do you know how many printings there were of the reproduction?

A. I don't know the exact figure, but I think about 150 copies that were reproduced in the New York State Organization at one time in 1947.

Q. Did you use this particular outline as a guide in the classes you taught after the reconstitution period of 1945?

A. It was one of my guides in teaching.

Q. Can you tell us what other guides were used in teaching?

A. A number of other guides, my own previous study as a student in the National Training School, discussions with the New York State Director, Alberto Morrow about method in teaching, the Little Lenin Library Classics, additional books, such as the struggle against revisionism, "History of the C.P.S.U. (b) program of the C.I., basic documents around the 1945 reconstitution convention, Little Lenin Library, the three books, "Strategy and Tactics", "The Theory of the Proletarian Revolution", "The Dictatorship"——

The Court: This recital means nothing unless it [fol. 253] will be supplemented by the works. If it is, then the recital is superfluous.

Q. I show you some books here, which I perhaps read already in evidence, and ask you if they are numbered among the books used by you teaching for the reconstitution period?

A. "What is to be Done", yes.

Mr. McDonough: May we have the exhibit numbers?

The Court: If these are already in evidence, you can refer to them by exhibit numbers.

Q. 18.

A. It was used. No. 16 was used, No. 15 was used, No. 14 was used, No. 13 was used, No. 20 was used.

Q. Were these classes that you taught supervised in any manner?

A. Yes.

Q. Who supervised them?

A. Some classes were supervised by the New York County School Director, a person by the name of Ben Zemonofsky. One class was supervised by the Educational

Director of an industrial school by the name of Dave Miller, one class was supervised by a person by the name of Martha Lewis or Lubowsky.

[fol. 254] Q. What position did these people hold in the Party at the time?

A. They were in the main functionaries in the Party educational field.

Q. With respect to these exhibits that I showed you, 20, 13, Exhibits 14, 15, 16 and 18, can you state whether or not these books were used back in 1940 when you went to the National Training School?

A. You mean 1941.

Q. 1941?

A. Yes.

Q. Same books were used in schools after 1946?

A. That is correct.

The Court: The jury only knows those by number. I think it would be well to supplement the numbers by name.

Q. With respect to the books I have been referring to, which the witness said were used when he went to the National Training School and used by him, I refer to Exhibit G-20, "History of the Communist Party and Soviet Union." Exhibit G-13, "Foundations of Leninism, by Joseph Stalin", Exhibit G-14, "Problems of Leninism, by Joseph Stalin", Exhibit G-15, "State and Revolution by V. I. Lenin", Exhibit G-16, "Left Wing Communism and [fol. 255] Infantile Disorder", Government's Exhibit G-18, "What is to be Done, by V. I. Lenin". Look at the National outline which you said was promulgated in 1946 and used by you in the classes you taught. What references to Communist Books or letter do you find in there?

A. I find references to every one of these books that we have here.

Q. Any additional ones?

A. And additional ones.

Q. How about "Program of the C.I."?

A. Yes, there is reference.

Q. That is the program of the Communist International?

A. There is reference to the program of the Communist International on the subject matter of strategy and tactics.

Q. Exhibits G-9 is that the book that is called "Program of the C.I."?

A. That is correct.

Mr. Henderson: If the Court please, I have to go into a little reading from these particular books that the witness has testified to. I am going to read from Exhibit G-20, known as the "History of the Communist Party, Soviet Union, Bolshevik". I read at page 9:

[fol. 256] At the paragraph halfway down "Marx and Engels taught the proletariat to be conscious of its own strength, to be conscious of its class interests, and to unite for a determined struggle against the bourgeoisie. Marx and Engels discovered the laws of development of capitalist society and proved scientifically that the development of capitalist society, and the class struggle going on within it, must inevitably lead to the fall of capitalism, to the victory of the proletariat, to the dictatorship of the proletariat.

"Marx and Engels taught that it was impossible to get rid of the power of capital and to convert capitalist property into public property by peaceful means, and that the working class could achieve this only by revolutionary violence against the bourgeoisie, by a proletarian revolution, by establishing its own political rule, the dictatorship [fol. 257] of the proletariat, which must crush the resistance of the exploiters and create a new classless, Communist society.

"Marx and Engels taught that the industrial proletariat is the most revolutionary, and, therefore, the most advanced class in capitalist society, and that only a class like the proletariat could rally around itself all the forces discontented with capitalism and lead them in the storming of capitalism. But in order to vanquish the old world and create a new classless society, the proletariat must have its own working class party which Marx and Engels called the Communist Party."

At page 356, beginning the second paragraph, "The Marxist-Leninist Theory is not a dogma, but a guide to action."

Now I will read from Exhibit G-13, that is "Foundations of Leninism," at the bottom of Page 22.

[fol. 258] "Such is the basis and substance of the method of Leninism.

"How was this method applied in practice?"

"The opportunists of the Second International have a number of theoretical dogmas to which they always revert as their starting point. Let us take a few of these.

"First dogma: Concerning the conditions for the seizure of power by the proletariat. The opportunists assert that the proletariat cannot and ought not to take power unless it constitutes a majority in the country. No proofs are adduced, for there are no proofs, either theoretical or practical, that can justify this absurd thesis. Let us assume that this is so; Lenin replies to these gentlemen of the Second International, but suppose a historical situation has arisen, a war, an agrarian crisis, etc., in which the proletariat, constituting a minority of the population, has an opportunity to rally around itself the vast majority of the laboring masses, why should it not take power then? Why should not the proletariat take advantage of a favorable International and internal situation to pierce the front of capitalism and hasten the general issue? Did not Marx say as far back as the fifties of the last century that things could have gone splendidly with the proletarian revolution in Germany had it been possible to assist it by, so to speak, a second edition of the Peasant War? Is it not a generally known fact that in those days the number of proletarians in Germany was relatively smaller than, for example, in Russia in 1917? Has not the practical experience of the Russian proletarian revolution shown that this favorite dogma of the heroes of the Second International is devoid of all vital significance for the proletariat? Is it not clear that the experience of the revolutionary struggle [fol. 260] of the masses confutes and defeats this obsolete dogma?"

Mr. McDonough: Is that as far as you are going?

Mr. Henderson: Yes, did you want to comment on that?

Mr. McDonough: No.

Mr. Henderson: Pages 55 and 56. "Marx's Qualifying Phrase about the Continent gave the Opportunists and Mensheviks of all countries a pretext for proclaiming that Marx had thus conceded the possibility of the peaceful evolution of bourgeois democracy into a proletarian de-

moeracy, at least in certain countries outside the European continent (England, America). Marx did, in fact, concede that possibility, and he had good grounds for conceding it in regard to England and America in the seventies of the last century when monopoly capitalism and imperialism did not yet exist, and when these countries, owing to the special conditions of their development, had as yet no developed militarism and bureaucracy. That was the situation before the appearance of developed imperialism. But later, after a lapse of thirty or forty years, when the situation in these countries had radically changed, when imperialism had developed and had embraced all capitalist countries without exception, when militarism and bureaucracy had appeared in England and America, also, when the special conditions for peaceful development in England and the United States had disappeared, then the qualification in regard to these countries necessarily could no longer hold good.

“‘Today’, said Lenin, ‘in 1917, in the epoch of the first great imperialist war, this qualification made by Marx is no longer valid. Both England and America, the greatest and the last representatives in the whole world of Anglo-Saxon liberty, in the sense that militarism and bureaucracy were absent, have slid down entirely into the all [fol. 262] European, filthy, bloody morass of military-bureaucratic institutions to which everything is subordinated and which trample everything under foot. Today, both in England and in America, the preliminary condition for every real people’s revolution is the smashing, the destruction of the ready-made state machine (brought in those countries between 1914 and 1917 to general European imperialist perfection.’”

It goes on, “In other words, the law of violent proletarian revolution, the law of the smashing of the bourgeois state machine as a preliminary condition for such a revolution, is an inevitable law of the revolutionary movement in the imperialist countries of the world.”

Now, 89, a new title, Strategy and tactics.

Q. That last quotation I gave at pages 55 and 56 of the book “Foundations of Leninism”, did you hear me read that?

A. Yes.

[fol. 263] Q. Is that in substance what you were taught in the National Training School?

A. Yes.

Q. Is that in substance what you taught in your classes after 1945?

A. That is correct.

Mr. Henderson: I read at 89.

"Only in the subsequent period in the period of direct action by the proletariat, in the period of proletarian revolution, when the question of overthrowing the bourgeoisie became a question of immediate action, when the question of the reserves of the proletariat (strategy) became one of the most burning questions, when all forms of struggle and of organization, parliamentary and extra-parliamentary tactics had fully manifested themselves and became well defined, only in this period could an integral strategy and elaborated tactics for the struggle of the proletariat be drawn up. It was precisely in that period that [fol. 264] Lenin brought out into the light of day the brilliant ideas of Marx and Engels on tactics and strategy that had been immured by the opportunists of the Second International. But Lenin did not confine himself to restoring certain tactical propositions of Marx and Engels. He developed them further and supplemented them with new ideas and propositions, combining them all into a system of rules and guiding principles for the leadership of the class struggle of the proletariat. Lenin's pamphlets, such as 'What is to be Done?', 'Two Tactics', 'Imperialism', 'State and Revolution', 'The Proletarian Revolution', and the 'Renegade Kautsky', 'Left Wing', 'Communism', etc., will undoubtedly always be treasured as priceless contributions to the general store of Marxism, to its revolutionary arsenal. The strategy and tactics of Leninism constitute the science of leadership of the revolutionary [fol. 265] struggle of the proletariat."

Q. Did you hear me read that?

A. Yes.

Q. Was that in substance what you were taught in the 1941 training school?

A. Yes.

Q. Is that in substance what you taught in these classes in 1948?

A. Yes.

Mr. Henderson: At page 103, "Reformism and Revolutionism", paragraph 6.

"What is the difference between revolutionary tactics and reformist tactics?

"Some think that Leninism is opposed to reforms, opposed to compromises and to agreements in general. This is absolutely wrong. Bolsheviks know as well as anybody else that in a certain sense every little helps, that under certain conditions reforms in general and compromises and agreements in particular are necessary and useful.

[fol. 266] "To carry on a war for the overthrow of the International bourgeoisie, says Lenin, a war which is a hundred times more difficult, protracted and complicated and the most stubborn of ordinary wars between states; and to refuse beforehand to manoeuvre, to utilize the conflict of interest, even though temporary, among one's enemies, to refuse to temporize and compromise with possible even though transient, unstable, vacillating and conditional allies, is not this ridiculous in the extreme? Is it not the same as if in the difficult ascent of an unexplored and heretofore inaccessible mountain we were to renounce beforehand the idea that at times we might have to go in zigzags, sometimes retracing our steps, sometimes giving up the course once selected and trying various others?

"Obviously, therefore, it is not a matter of reforms or compromises and agreements, but of the use people make of reforms and compromises.

[fol. 267]. "To a reformist, reforms are everything, while revolutionary work is something incidental, something just to talk about, mere eyewash. That is why, with reformist tactics under the bourgeois regime, reforms are inevitably transformed into an instrument for strengthening that regime, an instrument for disintegrating the revolution.

"To a revolutionary, on the contrary, the main thing is revolutionary work and not reforms; to him reforms are by-products of the revolution. That is why, with revolutionary tactics under the bourgeois regime, reforms are

naturally transformed into instruments for disintegrating this regime, into instruments for strengthening the revolution, into a base for the further development of the revolutionary movement.

"The revolutionary will accept a reform in order to use [fol. 268] it as an aid in combining legal work with illegal work, to intensify under its cover, the illegal work for the revolutionary preparation of the masses for the overthrow of the bourgeoisie. •

"This is what making revolutionary use of reforms and agreement under the conditions of imperialism means."

Page 109, "The Party as the vanguard of the working class."

"The Party must be first of all the vanguard of the working class. The Party must absorb all the best elements of the working class, their experience, their revolutionary spirit, their selfless devotion to the cause of the proletariat. But in order that it may really be the vanguard, the Party must be armed with revolutionary theory, with a knowledge of the laws of the movement, with a knowledge of the laws of revolution. Without this it will be incapable of directing the struggle of the proletariat, of leading the proletariat. [fol. 269] The Party cannot be real party if it limits itself to registering what the masses of the working class feel and think, if it follows in the tail of the spontaneous movement, if it is unable to overcome the inertia and the political indifference of the spontaneous movement; if it is unable to rise above the momentary interests of the proletariat, if it is unable to elevate the masses to the level of the class interests of the proletariat. The Party must stand at the head of the working class, it must see farther than the working class, it must lead the proletariat and not follow in the tail of the spontaneous movement. The parties of the Second International, which preach khvostism are vehicles of bourgeois policy, which condemn the proletariat to the role of a tool in the hands of the bourgeoisie. Only a party which takes the standpoint of the vanguard of the proletariat and is able to elevate the [fol. 270] masses to the level of the class interests of the proletarian, only such a party can divert the working class from the path of trade unionism and convert it into an

independent political force. The Party is the political leader of the working class."

Mr. Henderson: Reading from Exhibit 14, by Joseph Stalin.

Q. I will ask you with respect to the last reading again, was that in substance what was taught you in the National Training School in 1941?

A. Yes.

Q. Was that in substance what you taught in your classes after 1945?

A. That is correct.

Mr. Henderson: Page 7 of the "Problems of Leninism".

The Court: What is the number of the exhibit?

Mr. Henderson: No. 14. "In the pamphlet 'Foundations of Leninism', the well known definition of Leninism is given which seems to have received general acceptance. It runs as follows:

"Leninism is Marxism in the epoch of the imperialism [fol. 271] and of the proletarian revolution. Or, to be more exact, Leninism is the theory and tactics of the proletarian revolution in general, the theory and tactics of the dictatorship of the proletariat in particular."

Q. Mr. Lautner, was that taught in the National Training School in 1941?

A. Yes, sir.

Q. Is that what you taught in the classes after 1945? The reconstitution period?

A. Yes, this is a definition by Leninism.

Mr. Henderson: Q. For the benefit of the jury, can you give an enlargement of what that means?

Mr. McDonough: I object to that.

The Court: I sustain the objection. That was the teaching, that is the basis of the teaching. Beyond that it only becomes his personal opinion.

Mr. Henderson: Page 19, Exhibit G-14.

"THE PROLETARIAN REVOLUTION AND THE DICTATORSHIP OF THE PROLETARIAT."

[fol. 272] "Can such a radical transformation of the old bourgeois system of society be achieved without a violent revolution, without the dictatorship of the proletariat?

"Obviously not. To think that such a revolution can be carried out peacefully within the framework of bourgeois democracy, which is adopted to the domination of the bourgeoisie, means one of two things. It means either madness, and the loss of normal human understanding, or else an open and gross repudiation of the proletarian revolution.

"It is necessary to insist on this all the more strongly, all the more categorically, since we are dealing with the proletarian revolution which has for the time being triumphed in only one country, a country surrounded by hostile capitalist countries, a country the bourgeoisie of which cannot fail to receive the support of International capital.

[fol. 273] "That is why Lenin states that—the liberation of the oppressed class is impossible not only without a violent revolution, but also without the destruction of the apparatus of state power, which was created by the ruling class," he quotes from "Collected Works, Volume XXI, Book 2, Page 115, Also State and Revolution, Little Lenin Library, Page 9."

Continuing on: "First, let the majority of the population while private property is still maintained, that is, while the power and oppression of capital are maintained, declare itself for the party of the proletariat. Only then can it, and should it, take power. That is what is said by petty-bourgeois democrats who call themselves socialists, but are really the henchmen of the bourgeoisie. (*Italics—J.S.*)

"But we say, let the revolutionary proletariat first overthrow the bourgeoisie, break the yoke of capital, [fol. 274] break up the bourgeois state apparatus. Then the victorious proletariat will speedily gain the sympathy and support of the majority of the toiling non-proletarian masses by satisfying their wants at the expense of the exploiters. (*My italics J.S.*) (Collected Works, Volume 24, page 647, Russian edition.)

"In order to win the majority of the population to its side,' Lenin continues, 'the proletariat must first of all overthrow the bourgeoisie and seize state power and, secondly, it must introduce Soviet rule, smash to pieces the old state apparatus, and thus at one blow undermine the rule, authority and influence of the bourgeoisie and of the petty bourgeois compromisers in the ranks of the non-

proletarian toiling masses. Thirdly, the proletariat must completely and finally destroy the influence of the bourgeoisie and of the petty bourgeois compromisers among the [fol. 275] majority of the non-proletarian toiling masses by the revolutionary satisfaction of their economic needs at the expense of the exploiters.

"Such as the characteristic symptoms of the proletarian revolution."

Q. That section I just read from Stalin's book, was that taught to you in substance in the 1941 training school?

A. Yes.

Q. When you began to teach after the reconstitution of the Party in 1945, is that in substance what you taught?

A. Yes.

Mr. Henderson: Page 22 of Exhibit B-14.

"The class which has seized political power has done so conscious of the fact that it has seized power alone. This is implicit in the concept of the dictatorship of the proletariat. This concept has meaning only when one class knows that it alone takes political power into its own hands, and [fol. 276] does not deceive either itself or others by talk about popular elected government, sanctified by the whole people. (Collected Works, Volume 26, Page 286, Russian edition.)"

Page 25. "Pointing to one of the most important aims of the dictatorship, namely, the suppression of the exploiters, Lenin states:

"The scientific concept, dictatorship, means nothing more nor less than power which directly rests on violence which is not limited by any laws or restricted by any absolute rules. Dictatorship means, note this once and for all, Messrs. Cadets, unlimited power, resting on violence and not on law. During civil war, victorious power can only be dictatorship.' (Collected Works, Volume 25, Pages 441 and 453, Russian edition.)"

Q. That excerpt I have read, and the former one with respect to confusing dictatorship with popular government, were those the teachings you received in substance in the [fol. 277] classes of the National Training School in 1941?

A. Yes.

Q. With respect to the teachings you carried on as Party teacher in 1946, was that in substance what you taught?

A. Yes.

Mr. Henderson: Could I take a half minute to cool off?
Page 517, same exhibit.

"On the few occasions that Lenin was obliged, in controversy with opponents to speak of the dictatorship of the Party, he usually referred to the dictatorship of one party, i.e., to the fact that our Party holds power alone, that it does not share power with other parties. Moreover he always made it clear that the dictatorship of the Party in relation to the working class meant the leadership of the Party, its leading role."

Page 66.

"We are living, Lenin writes, not merely in a state, but in [fol. 278] a system of states, and it is inconceivable that the Soviet Republic should continue to exist for a long period side by side with imperialist states. Ultimately one or the other must conquer. Meanwhile a number of terrible clashes between the Soviet Republic and the bourgeois states is inevitable. This means that if the proletariat, as the ruling class, wants to and will rule, it must prove it also by military organization."

Q. In those classes you were taught in 1941 of the National Training School, was that in substance what was taught to you?

A. Yes.

Q. Your subsequent acting as teacher for the Party, 1946-1947 and 1948, is that in substance what you taught?

A. Yes.

Mr. Henderson: Reading again from G-14, page 75. Before I begin there is going to be a reference Comrade Zinoviev.

Q. Who was he?

A. At one time he was general secretary of the Com-[fol. 278a] munist International. Later on he was liquidated by Joseph Stalin.

Mr. McDonough: I object to that, if the Court please, I think we are getting to a point injecting prejudicial matters.

The Court: I sustain the objection.

Mr. McDonough: I ask that it be stricken out and the jury be instructed to disregard it.

The Court: Strike it out. The jury is instructed to disregard it, that is, the latter part.

Q. This man is now deceased, he is dead now.

A. I did not charge him with anything. Yes, he is dead.

The Court: Strike it out, all that remains is what position he once held in the Party.

Mr. McDonough: May I respectfully except and ask that this witness give responsive answers to questions?

The Court: I think he is trying to do that generally.

[fol. 279] Mr. McDonough: I think he did not just now.

Mr. Henderson: Page 75. "Will it not be truer to say that it is not the Party but Comrade Zinoviev who is sinning against Internationalism and the world revolution or what else is our country, the country that is building socialism, if not the base of the world revolution."

Q. I ask the same question, if that was the teaching you received in 1941 in the training school?

A. Yes.

Q. Did you teach that principle in substance in your teaching after 1946?

A. Yes.

Q. This book called "State Revolution", Exhibit G-15, written by V. I. Lenin, I am reading from the bottom of page 19.

Mr. Henderson (reading): "We have already said above and shall show more fully later that the teaching of Marx and Engels regarding the inevitability of a violent revolution refers to the bourgeois state. It cannot be replaced [fol. 280] by the proletarian state, the dictatorship of the proletariat through withering away, but, as a general rule only through a violent revolution."

Further on that page.

"The replacement of the bourgeois by the proletarian state is impossible without a violent revolution. The abolition of the proletarian state, i.e., of all states is only possible through withering away."

Q. Is that in substance what you were taught and what you in turn taught under the same questioning I asked you before?

A. Yes.

Mr. Henderson: Page 33 of the same Exhibit G-15.

Q. I have to ask you, because this word come into the paragraph, it starts out "On April 12, 1871, i.e., just at the time of the Commune", tell the jury what that is, "Commune".

A. It makes a reference to the Paris Commune in 1871, in France, where for a time the proletariat took part and held it for a while in Parchy, France.

Q. I think I will have you read this paragraph, starting page 33, April 12, and running down.

A. "On April 12th, 1871, i.e., just at the time of the [fol. 281] Commune, Marx write to Kugelmann.

"If you look at the last chapter of the 18th Brumaire——"

Q. What was that?

A. That was a period of the French Revolution. "You will see that I declare that the next attempt of the French Revolution must be, not as in the past, to transfer the bureaucratic and military machinery, from one hand to the other, but to break it up. (Marx's italics—the original is Zerbrechen,) and this is the precondition of any real people's revolution on the continent. And this is what our heroic Party comrades in Paris have attempted." There are two asterisks and an explanation. "Neue Zeit, Roman numeral XX, 1901-1902, page 709. The letters from Marx to Kugelmann have come out in Russian in no less than two editions, one of them edited and with an introduction by me. (Carl Marx, letters to Kugelmann, London and New York, 1933, Editor.)"

The Court: When you make it the subject of testimony it must be accurate, otherwise the jury can read it themselves.

Mr. Henderson: There were a lot of words I was having trouble with.

[fol. 282] The Witness: "In these words 'to breakup the bureaucratic and military machinery' is contained briefly

formulated the principal lesson of Marxism on the tasks of the proletariat in relation to the state during a revolution."

Q. 18th Brumaire, what is that?

A. I already stated that.

Q. French Revolutionary movement?

A. Phases of it.

Mr. Henderson: (Reading): "As for Marx's reference through the 18th Brumaire we have quoted above the corresponding passage in full. It is interesting to note two particular points in the passages of Marx quoted. First, he confines his conclusions to the continent. This was natural in 1871, when England was still the model of a purely capitalist country, but without a military machine and in a large measure without a bureaucracy. Hence Marx excluded England, where a revolution, even a people's revolution, could be imagined, and was then possible, with- [fol. 283] out the preliminary condition of destroying the ready-made state machinery.

"Today, in 1917 in the epoch of the first great imperialist war, this exception made by Marx is no longer valid. Both England and America, the greatest and last representatives of Anglo-Saxon liberty in the sense of the absence of militarism and bureaucracy have today plunged headlong into the all European dirty, bloody morass of military bureaucratic institutions to which everything is subordinated and which trample everything under foot. Today, both in England and in America, the precondition of any real people's revolution is the break-up, the shattering of the ready made state machinery brought in those countries between 1914 and 1917 to general European imperialist perfection."

I will ask Mr. White to read a little more. With the per- [fol. 284] mission of the Court can he ask with regard to teaching and his teachings of the subjects?

The Court: I understand he said that. It is only repetition.

Q. You have seen the quotations we are about to read before this session and studied them, are each one of them

in substance what you were taught in 1941 school, and what you began to teach after 1946?

A. Yes.

Mr. White: Page 53.

"Have these gentlemen ever seen a revolution? Revolution is undoubtedly the most authoritative thing possible. It is an act in which one section of the population imposes its will on the other by means of rifles, bayonets, cannon, i.e., by highly authoritative means, and the victorious party is inevitably forced to maintain its supremacy by means of that fear which its arms inspire in the reactionary. Would the Paris Commune have lasted a single day had it not [fol. 285] relied on the authority of the armed people against the bourgeoisie?"

Mr. McDonough: If the Court please, I think it should appear that is a quote from Engels in small print.

Mr. White: (Reading from "Left Wing Communism, an Infantile Disorder").

Page 38: "There can be no doubt that Messieurs, the Gomperses, Hendersons, Jouhaux, Legiens, and the like are very grateful to such left revolutionaries who like the German opposition on principle (heaven preserve us from such principles) or like some revolutionaries in the American Industrial Workers of the World advocate leaving the reactionary trade unions and refusing to work in them. Undoubtedly, Messieurs the leaders of opportunism will resort to every trick of bourgeois diplomacy, to the aid of bourgeois governments, the priests, the police and the courts in order to prevent Communists from getting into [fol. 286] the trade unions to force them out by every means, to make their work in the trade unions as unpleasant as possible, to insult, to hound and persecute them. It is necessary to be able to withstand all this, to agree to any and every sacrifice and even if need be to resort to all sorts of devices, manoeuvres, and illegal methods, to evasion and subterfuge, in order to penetrate into the trade unions, to remain in them and to carry on Communist work in them at all costs."

Mr. McDonough: Your Honor will recall I have had no previous opportunity to look at these at all. It already appears that the author is Mr. Lenin.

Mr. White: From Exhibit G-18: "What is to be done", commencing page 116, middle of the first paragraph:

"If you agree to discuss the question of catching the organizations and to stick to that question, then I assert that it is far more difficult to catch ten wise men than it is [fol. 287] to catch a hundred fools. And this premise I shall defend no matter how much you instigate the crowd against me for my anti-democratic views, etc. As I have already said, by wise men, in connection with organization, I mean professional revolutionists."

"In the overwhelming majority of cases, these forces of the present time shed their blood in the cause of restricted local work, but under the circumstances we are discussing, occasions would constantly arise for transferring a capable agitator or organizer from one end of the country to the other. Beginning with short journeys on Party business at the Party's expense, our people would become accustomed to live at the expense of the Party, would become professional revolutionists and would train themselves to become real political leaders."

Page 7: "What is to be Done is one of Lenin's outstanding [fol. 288] revolutionary writings."

The next page, "Written thirty years ago, What is to be Done, still retains its freshness because of the revolutionary enthusiasm which permeates its pages and the great lessons it has today for the workers in capitalist countries who would build their revolutionary parties after the pattern fashioned by Lenin during the formative period of the Bolshevik Party. Alexander Trachtenberg, December, 1931."

Mr. McDonough: This is the first time, I note there is no date except for the American dates. Will counsel stipulate in view of the editor's statement just quoted, this book was written by Lenin in 1901?

Mr. White: Yes, I will stipulate to that.

By Mr. Henderson:

Q. At any rate, Mr. Lautner, whatever the date of its writing, is, this was the book used in 1946 in your teaching?

A. That is correct.

[fol. 289] Q. You testified when you first began that you knew the defendant John Noto, you pointed him out in the court room. Where did you first meet him and what were the circumstances?

A. My recollection is I first met him in 1947, it so could be I met him before—

Mr. McDonough: I object to what so could be.

A. But it stands out in my mind as 1947.

Mr. McDonough: I object to what could be.

The Court: I overrule the objection, because he is fixing a date. He said it might have been before that, but at least it was at that time.

Mr. McDonough: I think from now on the witness should be confined to fact.

Q. Do you recall—

A. As a matter of fact, it is a fact I knew of John Noto in the thirties.

Mr. McDonough: I object to that as not responsive.

The Court: I sustain the objection, strike it out.

MOTION FOR MISTRIAL AND DENIAL THEREOF

Mr. McDonough: I move for a mistrial. This witness is obviously trying to inject some prejudicial matter.

The Court: I don't think he is. He might have known [fol. 290] him in a perfectly salutary way. It would not make any difference anyway. The jury is instructed to disregard it. I deny the motion for a mistrial. Just conform to the question asked, don't volunteer.

Q. When do you have the first recollection of meeting and knowing John Noto?

A. 1947.

Q. State what the circumstances were.

A. I was sent up by Bob Thompson and Bill Norman and Hal Simon—

Q. Identify these people.

A. I did, fifteen times already.

Q. The jury forgets.

A. Thompson was Chairman of the New York State Organization, Communist Party, William Norman was Execu-

tive Secretary, Hal Simon was Labor Secretary, and the three of them composed the State Secretariat of the State Organization. I was sent to make up a checkup on general cleanliness and security in the Buffalo sub-district of the Party.

Q. Where did you go?

A. I went to the Party Headquarters and met with Norman Ross who was Sub-District Organizer at that time.

[fol. 291] Q. You remember the map put in evidence, where you showed in red pencil the geographical area of the sub-district, was that the same area run by Norman Ross?

A. That is correct.

Q. That is Exhibit G-7. Ross was the Sub-District Leader?

A. That is correct.

Q. How did you happen to meet Noto?

A. He was in the headquarters of the Buffalo Sub-District of the Communist Party at that time.

Q. Where was their headquarters at that time?

A. Headquarters were a gray building, I don't know the street, but I can describe the building itself, right next to it was a stenographer school on the ground floor, adjacent to that was a publishing house, some kind of printing presses there. These objects stand out in my mind.

Q. Did they have some offices in the building in Buffalo?

A. Yes, on the second floor.

Q. Who introduced you to Noto?

A. Norman Ross, that Noto was—

Mr. McDonough: I object to what Ross said.

The Court: I sustain the objection.

Q. Do you know what Noto's capacity was in the [fol. 292] Communist Party at that time?

A. He was the greater Buffalo organizer of the Party or County organizer of the Party here under Norman Ross.

Q. What contact did you have with him at that time?

A. First was admonishing the leadership, Noto and Ross, for the dirty and filthy place they kept as headquarters, stack full of newspapers and all kinds of periodicals. Second was, security measures. They felt the telephone was tapped. Also one of the subject matters of dis-

cussion was that there was a State Committee member of the Party who was working in Lackwanna still at that time, both Norman Ross and John Noto felt he may be a Government plant in the Party. I think his name was Green. I don't recall the first name, negro Party member, these were the problems we discussed at that particular occasion.

Q. Was that about the substance of your contact with Noto at that time?

A. At that time.

Q. Did he have an office of his own in this particular building, layout of offices in Buffalo?

A. They were all in the same floor, there were a couple of smaller offices, maybe he had one, I don't know.

Q. How long did your visit to Buffalo last at that time? [fol. 293] A. I think a day or two. I have no specific recollection now, but I think it was a day or two.

Q. Do you have knowledge as to the next job John Noto held in the Communist Party of this area?

A. Yes.

Q. State what your knowledge is.

A. Well, in 1948, when Norman Ross was re-assigned to New York, Noto became Sub-District Organizer, before the 1948 convention.

Q. That sub-district of which he became organizer is the area shown by this on Exhibit G-7?

A. That is correct.

Q. What is the sub-district organizer?

A. Sub-district organizer is a party functionary who is responsible for the Party activities in that sub-district. He is a leader of that sub-district.

Q. What are these responsibilities?

A. He gives political leadership in that sub-district, he gives leadership and guidance to the other functionaries in the sub-district, he builds the Party numerically in that sub-district, he draws attention of the member to this concentration work, he has understanding of the Party membership in that sub-district, he builds Party press in that sub-district, he develops around the capable co-[fol. 294] workers leaders in the sub-district. All this are part of his responsibility.

Q. You mentioned there was a Board room in the

State Headquarters somewhere in the suite of offices you were connected with?

A. That is correct.

Q. What do you mean by a Board room?

A. We called it a Board room. It was a larger room on the floor where approximately 20 to 25 people could go there and sit around tables and carry on a conference or discussion.

Q. Were there Board meetings by the New York State Communist heads during these reconstitution years 1945 to 1948?

A. I know since 1947 on, there were regular Board meetings and State Committee meetings and organizational meetings, Board meetings as they were known.

Q. Did you ever see John Noto in attendance in any of those?

A. At Board meetings in the period 1947 to 1950 on numerous occasions.

Q. Can you give us an estimate of the number of times you saw him at Board meetings between 1947 and—

A. It would be difficult. It was quite a number of times. Board Meetings were held at least once a month. [fol. 295] Board meeting one week and next week. At that time in 1948 and 1949 John Noto came at least to every Board meeting.

Q. At the headquarters run by Thompson?

A. That is correct.

Q. There is this sub-district, Western New York. At the time Noto became Sub-District Leader was there any other sub-district in the State of New York?

A. Yes.

Q. What was that called?

A. That was the Eastern Sub-District of New York States, tri-city area, Albany, Schenectady, and Troy.

Q. Who was the leader of that area?

A. Hal Klein.

Q. At the time you left the Party in 1950, who was leader?

A. He was still there.

Q. Did you know him?

A. Yes.

Q. As an individual?

A. Yes.

Q. Did he attend these Board meetings, too?

A. Yes.

The Court: We will recess until Tuesday morning at 10 o'clock.

(Whereupon a recess was taken until Tuesday, April 3rd, 1956, at 10 o'clock.)

[fol. 296] PROCEEDINGS OF APRIL 3rd, 1956, at 10 o'clock.

APPEARANCES: Same as before noted.

JOHN LAUTNER, resumed the stand and testified further as follows:

Direct Examination. (resumed)

By Mr. Henderson:

Q. Do you recall the 1948 Communist Party convention in the State of New York, State Convention of the Party?

A. Yes.

Q. Were you present at that convention?

A. Yes.

Q. Were you present at that convention?

A. Yes.

Q. Where and when was it held?

A. It was held in July, 1948, in Webster Hall, downtown in New York.

Q. What official party function did you perform at this convention?

A. I was in charge of the security at that convention and the registration of all delegates into the convention.

Q. Can you state whether or not the defendant, John [fol. 297] Noto, was present at that convention?

A. He was.

Q. In what capacity?

A. He was delegate.

Q. You mentioned "In charge of security". Was this an open convention so far as the public and press was concerned?

A. It was not open.

Q. What process was undertaken to insure security?

A. I had about 30 people working with me on guarding exits and entrances to the place. At all times if anyone left the convention floor he or she was checked in or out. We had a master list of the delegates to the convention. As against that master list we had numbers to the names of each delegate. These were the working sheets we used, and we kept tab on delegates when they checked in in the morning, morning session, afternoon session and evening sessions. Any delegate that left during the sessions had to check out. We at all times knew who was in the convention and who was not in the convention. In addition to that, that delegates did not leave notes on the convention floor when the sessions broke up. These were the measures we took at that convention.

Q. What was this Webster Hall, a building that could [fol. 298] be rented?

A. Yes.

Q. And the Party rented the space?

A. That is correct.

Q. Can you state whether or not the defendant John Noto was elected to any office in the Party at that convention?

A. Yes.

Q. What office?

A. To the State Committee and to the State Board.

Q. Will you tell us what at the New York State Party level in 1948—the State Committee?

A. The State Committee was that body elected at the convention that was in leadership up until the next convention, and being in leadership carried out all the decisions, policies, that we discussed and passed upon at this convention.

Q. What was the State Board?

A. State Board was a smaller committee within the State Committee. There was a smaller committee of about a dozen people, no more.

Q. Can you state whether or not subsequent to this convention the defendant Noto attended meetings in New York City as State Committeemen, State Board man?

A. Yes.

[fol. 299] Q. Where were those meetings held?

A. Board meetings were held, only one I attended was in the Party building, at that time 35 East 12th Street, in the Board room of the Communist Party, New York State Headquarters. I recall one meeting was held in that, meeting was held in the Yugo Slav Hall on 41st Street on the west side.

Q. With respect to the meetings held in the Headquarters, State Headquarters of the Communist Party, was there any security with reference to the offices and as to whether or not outsiders came freely into those offices?

A. The normal security measures were in effect. Nobody could get inside the floor where the offices were. They were stopped in an ante-room outside by the technical employees, and only persons who were invited or had business on the floor were allowed to get in on the floor.

Q. At this 1948 State Convention, was there any other business transacted?

A. Yes, there was a discussion on the draft resolution—

Mr. McDonough: I have not objected, but I suppose I should object unless he is telling what took place when he was there.

The Court: He said he was there.

[fol. 300] Mr. McDonough: He said he was at some meetings.

The Court: He is talking about the convention.

Mr. Henderson: I will make that clear.

Mr. McDonough: I withdraw my objection.

Q. I refer to the 1948 State Convention. Will you state what other business was transacted in your presence?

A. There was a discussion on the draft resolution.

Q. I think we might not be clear on what a draft resolution is.

A. Resolution that was prepared by the National Committee of the Communist Party.

The Court: It is an exhibit here and says 60 days prior to the convention for discussion, a discussion of the Party

as a whole, and this resolution was later on adopted at the National Convention with certain amendments.

Q. What other business was transacted at that convention?

A. There was discussion on the reports of Bob Thompson, Bill Norman, Hal Simon, William Weinstone and others. There was a discussion and sharp clash at one point on the election of the delegation to the National Convention, the composition of that delegation. These were some [fol. 301] of the other activities I recall. There was a delegation elected to the National Convention, that is right.

Q. Can you state whether or not the defendant John Noto was elected a delegate to the National Convention?

A. He was.

Q. When was the National Convention scheduled to take place?

A. I think the last part of July and beginning of August.

Q. Of the same year?

A. Yes.

Q. Did such a 1948 National Convention of the Communist Party occur?

A. It did.

Q. State when and where it was held?

A. That was held at the end of July and the beginning of August in New York City at the Riverside Plaza, 73rd Street and Riverside Drive in New York City.

Q. Did you attend this National Convention?

A. Yes.

Q. What function did you perform as a Communist functionary at the National Convention?

A. At this convention I was in charge of security and registration of the delegation.

Q. Was this closed or open sessions with respect to [fol. 302] public and the Press?

A. No, it was a closed function.

Q. Will you tell us what security measures were taken by yourself in connection with the attendance at this convention?

A. I was in charge over here, about 40 people who guarded the hall at all times, including night times when there were no sessions, checked in all the delegations, delegations had three types of cards, regular delegate's cards

and alternate delegate's cards and fraternal delegate's cards, also we had a master list with the names of all the delegates in the three categories and the numbers of the delegate's cards tickets attached to the names. On the basis of those numbers we had working lists, so we checked in every delegate to every session on the basis of the numbers on their tickets, and at all times knew where every delegate was, kept vigilance that no notes or paper should be left around when the sessions broke up. These were some of the steps we took.

Q. Can you state whether or not the defendant John Noto was present at this National Convention of the Communist Party in August, 1948 as a delegate?

A. He was.

Q. Will you state what action or business was under [fol. 303] taken at the convention?

A. The main report at this convention was given by Eugene Dennis.

Q. Who was he?

A. General Secretary of the Communist Party.

Q. Full time functionary I take it?

A. Yes. There were sub-reports given by Weinstone.

Q. Who was Weinstone?

A. He was National Organizational Director of the Communist Party, and other sub-reports were given there. The convention broke into panels. There was a panel on the constitution, a panel on youth, a panel on negro work, on labor and other groups. Then these panels reported back to the main convention on their work, the Constitution Committee reporter was called Winters. I think on the youth panel the reporter was Bob Thompson. The resolution was voted upon. This National Committee of 13 was elected.

Q. National Committee of 13 members?

A. That is correct. These are some of the actions that stand out in my mind.

Q. In former years, what was the composition of the National Committee, if you know, in numbers?

A. In 1945, the convention preceding this 1948 convention, there were 53 members elected to the National Committee [fol. 304].

Q. This was reduced to 13 at the 1948 convention?

A. That is correct.

Q. Was there any discussion by anyone as to the reason for cutting the number from 50 to 13?

A. Yes.

Q. State who discussed it at the convention?

A. Eugene Dennis, he said that the reason that the National Committee will be reduced to the proposed size is because there were not any deserving leading Party members who do not deserve to be on the committee, and he pointed out a number of people who should be on the committee, but the Communist Party at this time has not proposed or will not make a list available, does not propose to make a list available to the Government for additional prosecution.

Q. Had there been an event prior to this with respect to prosecution of Communist leaders?

A. Yes.

Q. What happened?

A. National Board members were indicted by the Government.

Q. That included among other things whom?

A. William Z. Foster, John Dennis, Jack Stachel, Irving [fol. 305] Potash, Henry Finstone, John Gates, Gus Hall, Carl Winters, Gil Green, there were 12 of the Board members.

Q. Did that National Convention concern itself in any manner with Earl Browder the former National leader?

A. Yes.

Q. What action was taken with respect to Earl Browder?

A. To Earl Browder personally, his application for re-admission into the Party was *anonymously* rejected, and once more his policies were repudiated, and once more it was re-affirmed that the Party in 1945 took the proper steps when they reconstituted themselves on the Marxism-Leninist basis.

Q. They repudiated the revisionism under Browder?

A. That is correct.

Q. Did you attend the National Convention of 1945?

A. Yes.

Q. Was there a constitution adopted at that convention?

A. Yes.

Mr. Henderson: Mark this, please.

(Thereupon Constitution marked Government's Exhibit G-41 for identification.)

Q. I show you Government's Exhibit G-41 for identification, and ask you if you can identify it?

A. Yes.

[fol. 306] Q. What is it?

A. This is the constitution of the Communist Party of United States of America adopted at the 1945 Re-constitution Convention.

Q. That is the National Convention?

A. That is correct, it also contains by-laws of the New York State Communist Party.

(Thereupon document marked Government's Exhibit G-42 for identification.)

Q. In the 1948 National Convention, can you state whether or not a constitution was adopted by the Communist Party of the United States of America?

A. Yes.

Q. I show you Government's Exhibit G-42, and ask you what that is?

A. This is the constitution adopted at 1948, at the convention which is basically the same constitution as that was adopted in 1945, with some amendments.

OFFERS IN EVIDENCE AND OBJECTIONS THERETO

Mr. Henderson: I offer Government's Exhibits G-41 and G-42.

(Thereupon Government's Exhibits G-41 and G-42, previously marked for identification, received in evidence.)

Q. You mentioned certain changes for amendments between the constitution of 1945 of the Party and the constitution of 1948. Can you state by examining these documents what those differences were?

Mr. McDonough: I assume he is pointing out certain portions of the document, not to interpret.

The Court: Yes.

Mr. Henderson: That is right.

Q. I invite your attention to Article, page 2, at page 20 of the 1945 constitution.

Mr. McDonough: What was that?

Q. Article 9, Section 2 of the 1945 constitution and Article 8, Section 3 of the 1948 constitution. Will you state what differences in that section exist?

Mr. McDonough: You are going too fast for me.

Q. Section 3, page 20.

Mr. McDonough: That is Exhibit 42?

Mr. Henderson: Yes.

The Court: He can read it, but not interpret it.

Q. Supposing you read the differences.

A. From the 1945 Constitution, Article 9, page 20, Section 2 reads as follows: "Adherence to or participation in activities of any clique, group, circle, faction or party which conspires or acts to subvert, undermine, weaken, or overthrow any or all institutions of American democracy where- [fol. 308] by the majority of the American people can maintain their right to determine their destinies in any degree shall be punished by immediate expulsion."

Q. What did the 1948 section say?

A. On Page 20, Article 8, Section 3 read as follows: "Any member shall be expelled from the Party who is found to be a strike breaker, provocateur, engaged in espionage or who advocates force and violence or terrorism, or who adheres to or participates in the activities of any group or party which conspires or acts to subvert, undermine, weaken or overthrow any or all institutions of American democracy through which the majority of the American people can maintain their right to determine their destinies."

Q. This 1948 constitution is the one that was adopted following the indictment of the top Communist leaders of the Smith Act, is that right?

A. That is right.

Q. During your membership in the Communist Party of America, did you become acquainted with the Communist Party organization and the structure very well between 1945 and 1948?

A. Yes, I was teaching it.

Q. You have described one of the courses you taught to these various groups from time to time during that [fol. 309] period?

A. Yes, I was teaching the Communist Party structure, democratic centralism and discipline.

Q. Was there any change in the Party structure or organization between 1948 and 1950 when you left the Party?

A. Yes, there was two changes I am aware of right now, one a reduction of the size of the National Committee to 13, and the appointment of the National Review Commission, instead of the election of the National Review Commission at the 1948 convention.

Q. During your teaching of Party structure and organization, what method did you use before your classes?

A. I used a blackboard.

Q. Did you make a chart of the Party structure and organization?

A. Yes.

Q. As a visual aid to the students?

A. That is right.

Mr. Henderson: If the Court please, I have some exhibits on this board. I have tried to figure out the best place to put it, it seems to me so that the Court and jury can see it it could be put over there. (Blackboard placed.) [fol. 310] Mr. Henderson: Will you mark that chart?

(Thereupon chart marked Government's Exhibit G-43 for identification.)

Q. Will you step down, with the permission of the Court, and give your attention to Exhibit G-43. I have some small charts, exact duplication of that, perhaps with the Court's permission I could give one to the jury and council, it might be easier to follow.

The Court: As long as it is in evidence, the jury can follow it. You have to get it in evidence.

Q. What is this?

A. This exhibit is the organizational chart of the Communist Party between the years 1945 and 1948, that I was drawing on the blackboard at the time I was teaching Party organization, Party structure, democratic centralism,

Party discipline in the classes I taught, in which I taught in 1946, 1947 and parts of 1948.

Q. Is this present exhibit G-43 a reproduction of the organizational chart you used in your teaching during that time?

A. In substance it is.

Mr. Henderson: I offer that exhibit in evidence at this time.

Mr. McDonough: If you have a photostat, could I see [fol. 311] one?

Mr. Henderson: Yes.

The Court: Offer it in evidence.

Mr. Henderson: Yes, I have offered it.

Mr. McDonough: We have no objection except as originally stated.

The Court: Yes, received in evidence. As long as the jury will be furnished with a copy I suggest that the witness use the copy and take the witness stand because it is difficult for the reporter to get the testimony.

(Thereupon Government's Exhibit G-43, previously marked for identification, received in evidence.)

Mr. Henderson: I have to ask the alternate juror, you can probably see it. I have just one of these left.

Q. Would you step down and state the organizational system of the Party between 1946 and 1948, as you did, beginning at the lower unit of the Party and working up, describe it as shown on the chart and the function of each division and department?

A. The basic organization of the Communist Party is the branch club or unit, Party branch that works in a community in a designated small area is known as a community club or community branch. The Party branch or Party club who functions in a given shop or factory is known as a shop branch, shop club or shop unit. Where there are no Party members in sufficient numbers in one specific shop, but there are a number of scattered Party members in the same craft or same occupation, they are organized into an industrial club or industrial branch. Where there is a factory or shop with no Party member in it and the Party designates that shop or factory for concentration, the Party selects members from the com-

munity branch and assigns them to this particular concentration work. Such branch is known as an industrial concentration branch. Every Party member in the Communist Party must belong to a Party club or a Party branch. The task of the community branch is to carry out the Party policies in the given community in their territorial designation into the community branch works. Shop branch carries out Party policies in the shop, and industrial branch carries the Party policies in that specific industry in which the industrial branch functions, and the industrial concentration branch carries out Party policies from the [fol. 313] outside on that particular shop on which that concentration branch works. In a larger unit the branch leadership is in the hands of a branch executive, following functionaries may be members of the branch executive, but not necessarily every one of them. Branch Organizer, Branch Membership Secretary, Finance Secretary, Labor Secretary, Press Director, Educational Director, Group Captain, Literature Director. Any of these members can be on the Executive Committee, but not necessarily all of them. Executives should be composed of at least four members. In order to expedite and check and control the work of the Party branches, the Party breaks into groups three to five, and the executive of the Party club appoints a captain over these groups. These captains see to it that the members actually do their assignments, pay their dues, attend Party meetings. In certain instances group captains can be on the branch executive also. In a larger unit, where there are a number of branches in a larger city and these branches come together once in two years through delegated representatives to an executive convention, discuss the problems how to carry out to the best of their abilities, Party policies in that given territory, and they [fol. 314] elect a section committee. A section committee is the leadership that gives leadership to all the branches in that given territory of the section. The section committee in order to expedite its work elects a Section Organizer, Section Organizational Secretary, Labor Secretary, Educational Director, Dues and Finance Secretary, Youth Director, and Press Director, and any other functionary that is necessary to carry out the functions of the section leadership.

The next highest form of organization is city form or county organization of the Communist Party, city or county organization or city or county. Committees of the Communist Party are elected by the delegates who are elected at the Section Convention and come to town, county or city convention, and they elect a city or county committee that gives leadership and guidance to all Party organizations in that city or county.

Q. When you first met the defendant Noto, what capacity did he have in the Communist Party and at what level?

A. In 1947 I think he was County Organizer in which Buffalo is situated, I think it is Erie County. Delegates from city organizations, county organizations, and from their conventions, section conventions, elect delegates to a [fol. 315] state or district convention of the Party which occurs approximately once every two years.

Q. I want to interrupt you. You have described a county organization, you testified John Noto subsequent to 1947 became Sub-District Organizer. Where does that fit on that chart?

A. On this particular chart it does not fit in, because it was a unique situation in the State of New York, and it was at one time a district in itself. In the last thirties it became part of a state organization, and after that the district ceased to be as a district to become a sub-district of the State organization.

Q. The sub-district has what relationship to the county organization?

A. Sub-district of Western New York, John Noto was head of the sub-district, gives leadership and guidance to all the cities and counties in that particular sub-district.

Q. The sub-district that Noto was the head of, you have shown on that map, Exhibit G-7?

A. Yes.

Q. Encompassing Rochester, Binghamton—

A. Syracuse, Utica, Niagara Falls, Jamestown—

The Court: We know that.

A. Which occurs about once every two years, where a [fol. 316] district or state committee is elected, district and state committee is responsible to carry out activities of the convention for the next two years. In order to expedite

its work, many phases of activities, the state committee organized itself. It elects a body within itself known as the State Board. That body elects a secretariat as it happens to be the organization in the New York State Organization of the Party. In addition to that, because of the many activities of the State Organization, sub-committees are organized or commissions are organized headed by specialized people, members of the Party in the state parties of the Communist Party.

Q. You have testified in 1948 the defendant John Noto became a member of the State Board and committee and later that he was a delegate to the National Convention. Mark in red pencil the level at which Noto became State Board member and State Committee member in 1948.

Mr. McDonough: I object to this, marking anything in red pencil. I think we are all intelligent, I think the jury understands the testimony of this man. I object to marking [fol. 317] anything on the chart.

The Court: Objection overruled. He is only pin-pointing it for the purpose of clarity.

The Witness: The key committee in the organization, committee of the State Organization headed by the organization secretary or executive secretary of the State Organization and Organization Committee organizes all the sub-committees, commissions or directors that carry out one phase of the activities of the Communist Party for the organization as a whole, organizes their meetings, appoints their personnel, such commissions are Literature Commission, headed by the Literature Director, Legislative Committee, headed by the Legislative Secretary, Nationality Groups Commission, headed by the Nationality Groups Secretary, Woman's Commission, headed by a Secretary of the Woman's Commission, Review Commission, headed by a Review Commission Secretary, Negro Commission [fol. 318] Secretary, Negro Commission, headed by a secretary, Labor Commission, headed by a secretary, Educational Commission headed by an educational director, Youth Commission, headed by a Young Commission Secretary, Veteran's Commission headed by a Veteran's Director, Press Circulation Director, Cultural Division, headed by an organizer, Finance Committee, headed by a Finance Secretary, Farm Commission, headed by a

secretary. All these personnel plus the Organizational Commission is the operating staff of the Party on a state level or district level. There are instances where one state covers the exact territory of one district of the Communist Party. There are some instances where there are a number of state organizations in one district, like the New England States, or out on the West Coast, California, Nevada, under its jurisdiction, in the Northwest. Then there are instances [fol. 319] where there are more than one district in a given state. In Pennsylvania there is two district organizations, one with headquarters in Philadelphia, and the other one District 5, headquarters in Pittsburgh. These state or district organizations also come together through their elected delegate once every two years to a convention called by the National Committee. At the convention after discussing the present situation as it exists at the time, draw up a resolution showing the Party as a whole, what tasks the Party is facing in the immediate future, they elect a National Committee that gives leadership between conventions to the Party as a whole. In order to expedite the many activities of the Party as a whole, the National Committee organizes itself and elects a smaller committee known as the National Board, and in return the National Board elect [fol. 320] a National Secretariat, that gives hour to hour, day to day guidance to the Party as a whole.

Q. With respect to that National Convention you spoke about delegates coming from the State Organization to the National Convention?

A. That is correct.

Q. Is that the type of delegate that John Noto performed in 1948?

A. Yes.

Q. At the National convention?

A. Yes. In addition to the National Board and the Secretariat, the Organizational Committee is the key Committee of the National Committee. The Organizational Committee headed by an organizational director organizes the various commissions, sub-committees of the National Commission, composed of specialized people, Party members who carry out the policies of the Party in their respective committees. Such National Commissions are the Labor Commission, Educational Commission, Negro Commission, Youth Com-

mission, Veteran's Commission, Woman's Commission, Press Committee, Nationality Groups, Legislative Commission, Farm Commission, National Training School Commission, Finance Commission and Publications Commission, and other temporary commissions from time [fol. 321] to time as the Party deems it advisable to appoint temporary commissions. The National Convention also elect a National Review Commission. The Review Commission functions to safeguard and increase vigilance in the ranks against all enemies, anyone in the ranks, and use activities of the leading cadres of the Party from time to time. All decisions of the National Leadership, National Committee, National Board, are binding in the Communist Party on every organization, sub-organization and member in the Communist Party, whether they agree or disagree—

Mr. McDonough: I object to that.

The Court: Objection overruled.

Mr. McDonough: Exception.

The Witness: Whether they agree or disagree with it. The Communist members carry out these decisions on the basis—

Mr. McDonough: I object to that.

The Court: I sustain the objection.

Mr. McDonough: May I ask to strike it out?

The Court: Strike it out.

Q. In connection with your teaching of the organizational chart, did you also teach what you described as democratic centralism?

A. Yes.

[fol. 322] Q. Were those classes supervised?

A. Yes.

Q. By whom?

A. School Director of New York County, Ben Simonofsky.

Q. The principle of democratic centralism is the application of adherence to a superior decision all the way down the line?

A. That is part of it.

Mr. Henderson: I think the witness is qualified.

The Court: That was not the objection. The objection

was to the statement what the members do. He is merely reciting the procedure.

The Witness: I can only relate what I did in the classes.

The Court: There is no objection to what he did.

Q. State what you did.

A. All decisions are mandatory on all members, and lower committees in the Party. Only in this way can the Party achieve the oneness unit of will to act as one on any and all decisions. If one takes exception to some decisions, he must carry it out, and he can—

Mr. McDonough: I presume he is referring to teaching?

The Court: That is right.

• The Witness: He can raise his objections within his [fol. 323] organization or next higher committee and carry his objections all the way to the National Convention if necessary. Discussion in the Party is opened up once every two years before the National Convention based on the National Draft resolution. In these 60 days—

Mr. McDonough: This is repetitious. He described all this.

The Court: Objection overruled.

The Witness: All phases of the draft resolution are open to the closest scrutiny and debate and discussion. Once the organization makes a decision, the discussion closes, the resolution decision becomes the property of the Party, and the National Committee, and the whole Party as such is obliged to carry out these decisions.

Q. With respect to the defendant Noto, whom you have shown as a member of the State Board, tell us what you did with respect to the functions of the members of the State Board in the New York State Communist Organization?

[fol. 324] A. I already did that.

Q. I am not sure whether you testified to this. During the years 1948 until you left the Party, did you attend State Board and Committee meetings from time to time?

A. Yes.

Q. Can you tell whether or not the defendant John Noto attended those State Board and Committee meetings as a member?

A. I attended some where he attended. He may have attended some I was not there and I may have attended some he was not there, but there were occasions we attended together.

Q. You have testified in 1948, 12 of the top Communist leaders were indicted under the Smith Act. Following that event in the convention of 1948, what activities were you concerned with as Communist Party functionary?

A. My main assignment in 1948 and 1949 was to help build the, underground organization of the Communist Party.

Q. What do you mean by the underground from the Communist Party standpoint?

A. We were to build a parallel organization with the existing structure of the Communist Party in which parallel organization we were to integrate about ten per cent of the Party membership.

[fol. 325] Q. Who assigned you to this task of becoming active in organizing the underground?

A. In this state secretariat of the Communist Party, Bob Thompson, Bill Norman and Hal Simon.

Q. The secretariat is a three-man group?

A. It was in 1948.

Q. That is the organizational secretary?

A. Labor secretary.

Q. And the State Chairman?

A. That is correct.

Q. When was this assignment given to you?

A. In September, 1948.

Q. Was this assignment given to you at a meeting with the secretariat?

A. Yes.

Q. What specific duties were you charged with carrying out?

A. After the preliminary discussions about the structure itself, about employment of this structure with necessary so-called horizontal aspects, with supplying the structure with printing presses, with hiding places for Party leaders, drop places.

Q. For what purpose?

A. For part of the communication system of the underground.

[fol. 326] Q. You mean a place to leave messages?

A. That is right, receiving supplies, to establish arrangements for supplies for the printing presses, such as printing paper, to arrange a financial apparatus along with the underground. These are some of the tasks. In addition to that, later on, to check the existing, to what extent was the organization built. Late in 1949, these were some of the tasks that was my responsibility in 1948 and 1949.

Q. With respect to the National Leader Foster were you present at a meeting where the underground system was discussed?

A. I was present in a meeting with Bob Thompson, Hal Simon and Bill Norman where the underground was discussed, and Thompson gave a report to us. There were only four of us.

Q. What was the report?

Mr. McDonough: I object to this on the ground it is not binding on this defendant, no proof he was there.

The Court: Objection overruled.

Mr. McDonough: Exception.

The Witness: Thompson reported that William Z. Foster, who recently returned from Europe, discussed with [fol. 327] the International leadership some of the problems facing the American Communist Party, and what was the experience of the various parties in a similar situation.

Q. You mean foreign parties?

A. That is right, that it was the experience of these parties abroad that every time they faced a situation of illegality there was a contraction of approximately 90 per cent of their Party membership.

Q. Falling away?

A. Falling away of about 90 per cent of the membership. If that is the International experience, our problem here was to find that 10 per cent of the Party membership that will enable the Party organization to function as an organized group under any and all conditions. Thompson said that 10 per cent of the membership must be placed in the trade unions, in the mass organizations, where there will be a lot of elbow room for these Party members to

function. He also said there are certain prerequisites for the proper and cautious selection of this 10 per cent members. The key criteria should be absolute loyalty and devotion of the individual member to the Party in face of—with the Party. He suggested since the New [fol. 328] York State Organization of the Party had approximately 30,000 members to form an organization that will be composed of approximately 3,000 Party members. He also said that Foster was talking about three system, that this three system proved to be the best organizational structure for the protection of the members of this organization, it has been decided all the authorities on the other side know about this organizational structure.

Q. The foreign parties?

A. The authorities on the other side know about this system, still it is the best form of organization for the protection and continuous activity of the Party organization. He drew some triangles on a paper, and he said to integrate about three thousand members we would have to have seven levels of organization in the structure, that New York will have the top three leadership, that top three will break down into threes that will compose of nine members—

Q. In order to explain this did he make a chart?

A. He was drawing triangles on a piece of paper.

Q. Were you acquainted with this three system as Thompson outlined it?

A. Yes.

Q. As you continued your checkup on the various areas [fol. 329] as to compliance with this underground system, did you have occasion to allude to this three-system?

A. Yes, he instructed me to draw up the whole structure for him, putting in all the threes and all seven levels into this structure and give it to him. I could not do it, because the seven level was some 2100 triangles. I could not put it on a sheet of paper. What I did, after I drew up one area, and that area practically became a circle.

Q. Have you used all the threes at the 7th level?

A. That is right.

(Thereupon chart marked Government's Exhibit G-44 for identification.)

Q. I show you Government's Exhibit G-44 for identification, and ask you if you are familiar with it and can describe what it is?

A. Yes, this is a reproduction of what Bob Thompson was drawing on a piece of paper.

Q. Is this a diagram of the system of threes to be used in the underground?

A. That is correct.

Mr. Henderson: I offer that chart in evidence.

Mr. McDonough: My objection is on the same ground previously stated, incompetent, irrelevant and immaterial [fol. 330] as to this defendant.

The Court: Objection overruled.

(Thereupon Government's Exhibit G-44, previously marked for identification, was received in evidence.)

Q. Mr. Lautner, with respect to Exhibit G-44 in evidence, will you take your pointer and state to the Court and jury the manner in which these three system was executed, the plan that was given to you and which you put into execution, and which you checked as to the progress being made in various areas of New York State?

A. The building of this structure was to begin at the top. The top three leaders in the New York State organization of the Communist Party. The person on the top of this triangle was the political person. The next person was the organizational person, and the third person was the trade union mass organization person. Two months time was said to build this structure to the fourth level. Within this two months time the political person was to select a point, three persons on the next level that was designated his area. New York State was divided into three areas. Area 1 was New York County with all the industrial sections and the cultural division.

[fol. 331] Area 2 was Kings County, that is Brooklyn, Queens County, Bronx County and Westchester County.

Area 3 was everything north of Poughkeepsie. That included Buffalo Sub-District, and also the tri-city area, Albany, Schenectady and Troy. When he appointed his three tops to head each area, at the same time O appointed on the next area, and P trade union man, union organi-

zation appointed his three in the next level in the area to him. P only knew his three on the lower level. O knew only his three and trade union mass organization knew only his three in the next level of leadership. By arrangement these three got together, they received instructions as to the time and place where each three were to meet. It was not necessary for P to notify O or D and likewise the other two. The same principle that operated the area broke down into counties, and each of these three appointed their equal. P appointed his P, O his O and D his D on the next level, and the same principle followed down to the fourth level. The fourth level was checked in the summer of 1949 in two areas. Areas 1 and 2, and the result of that checking, I met with Bob Thompson, Bill Norman and Hal Simon and reached the conclusion that up to the fourth level we hit the bottom of the barrel [fol. 332] too fast. There were certain elements integrated in the structure of these two areas that did not belong in there, and a replacement had to take place in order to have that finished and proceed further down to the seventh level and a check was made on area 3, Buffalo, tri-city area in October, 1949. I came down myself and met the top three.

Q. Who were they?

A. John Noto, Al Lutzky, a person by the name of Steele from Jamestown.

Q. Let me interrupt you just a second. You have mentioned there was area 3 which was all the territory north of Poughkeepsie?

A. That is correct.

Q. In the underground system which was then in the making, who was the leader of area 3?

Mr. McDonough: I object to that, if the Court please, calling for a conclusion.

Q. Who was charged with it?

The Court: If he demonstrates he has knowledge of it.

A. Yes.

Q. Who was it?

A. Noto.

[fol. 333] Q. John Noto the defendant?

A. That is right.

Q. Would you in this map, Exhibit G-7, which shows the sub-district area show the expanded area of the underground which was under the direction of John Noto? You have encompassed the entire state except south of Poughkeepsie?

A. Somewhere north of Poughkeepsie, whatever the Party had north of Poughkeepsie.

Q. Do you recall a meeting in New York City which was attended by the defendant and others with respect to setting up the underground system?

A. Yes.

Q. Where did that occur and when?

A. That meeting occurred in February, 1949—January or February, about a month after the new year at 77 Fifth Avenue in the I. W. O. Hall on Fifth Avenue.

Q. Who was present at the meeting?

A. We had three groups. Those who were permanently present was Bill Norman, the Executive Secretary of the New York State organization, Hal Simon, May Miller and myself, and we brought in county leaders in three different groups all during the day, started out in the morning.

Q. Did there come a time when the defendant Noto came [fol. 334] before that group?

A. That is correct.

Q. Can you state what was said in Noto's presence by this group concerning the underground movement and its development?

A. There was a general report given by myself in order to forestall any disorganization in the ranks. A lot of questions was raised, what is the Party doing in the face of the attacks. In order to forestall a disruption, I gave a general report, the Party is taking ample precautions, building organizations indicates these Party leaders to whom we are talking now are concerned with such problems from the lower ranks, they should state to these members that the Party is taking care of the situation. It was a general meeting, acquainting these leaders that the Party is taking steps and in time they will be contacted and their role will be given to them when the Party so decides. It was that type of a general report to these groups brought into that meeting on that day.

Q: Have you finished your discussion of the chart system?

A: Not yet.

Q: Proceed.

A: After the summer of 1949, in two areas the system [fol. 335] was build all the way down to the seventh level, and it was accomplished all the way to the seventh level at the time of left the Communist Party. In the beginning of January, 1949 in area 3, in October, 1949, according to the report given by John Noto we faced this problem, in Buffalo—

Mr. McDonough: May it appear when this report was given by the defendant.

The Witness: October, 1949, in Buffalo.

Q: Was that on the occasion of your coming to Buffalo to check on the development of the underground?

A: Yes.

Q: Will you describe your visit or its purpose, under what direction?

A: I was sent down by the secretary of the Party, specifically Hal Simon and Bill Norman to check on the status of the organization as far as the underground organization is concerned in the third area and report back to the secretary.

Q: With whom did you meet?

A: I already stated, Noto, Lutzky and Steele, the three top in the Buffalo area.

Q: Where did you meet?

A: All I recall, we were driving out, it is approximately, I would say about two miles from the center of the [fol. 336] city along the river front. There is a couple of park benches, a little park behind the river front. There is a road between the park and river front. We are sitting on a park bench in the open, nobody around. In front of us was the Niagara River.

Q: Did the defendant say anything concerning the underground system to you?

A: Yes.

Q: What did he say?

A: He said he had difficulty in going down to the sixth level and seventh levels in area 3 in Buffalo proper from

the area level down, they would penetrate all the way to the fifth level, and fill in the threes in cities like Rochester, they could go down to the fourth level, filling in the threes. Other places, like Binghamton, they could not go beyond the third level from the area level down. Also in one part of the area, Albany, Schenectady, Troy, Noto made a recent check and there were only altogether four groups of threes organized at that time. We also discussed at this meeting the question of printing apparatuses, printing presses—

Q. Let me interrupt. I think you said one of your jobs was in furnishing the underground system, was to see printing material, hiding places, and so forth, where [fol. 337] ever available, is that correct?

A. Yes.

Q. Did there come a time you had something to do with the defendant Noto involving printing presses?

A. Yes, there were a number of occasions in 1949 where this question of printing presses for the area 3 came up between myself and Noto in consultation with the Secretary.

Q. What was said by Noto and what was said by you or to the secretariat in Noto's presence?

Mr. McDonough: May it appear when and where?

The Court: Yes, I think you should fix the time.

Q. Where was it?

A. In the Party building. Noto came into my office, raised the question—

Q. Tell us when.

A. I would say in the spring of 1949.

The Court: Who was present?

The Witness: Noto and myself in my office.

Q. What was the discussion?

A. His problem was evidently—he said he had a discussion with the secretariat, I was to help him get a photo offset printing machine.

Q. Will you tell us what a photo offset printing machine is?

[fol. 338] A. Photo offset is a high-speed printing machine that operates from a stencil, sensitized stencil and in

linotype that can produce as much as 3,000 copies an hour. It is powerful and good enough to print pamphlet, folders, leaflets, whatever the occasion calls for.

Q. Run by electricity?

A. Yes.

Q. What did you do about his statement you were to provide him with this press?

A. I told him I had this machine, but it would be his responsibility to get it to Buffalo. He said he is going to make arrangements to send a truck down, and he did.

Q. Did you give him the machine?

A. Yes.

Q. Was there any further discussion at a later time?

A. Yes; I told him where the machine was, to pick it up at the designated place. The machine was in a small factory on White Plains Road, between Burk Avenue and Alerton Avenue. Truck came down I think Saturday shortly after this conversation. I met the driver of the truck. He was section organizer of the Communist Party in Syracuse. He went out to the place, took the machine, [fol. 339] and then when Noto came into the Board meeting next time he told me both driver and the other fellow who was with him taking the machine feared that they were followed from the George Washington Bridge all the way to Syracuse. I questioned him what this fear was based upon. In this discussion we agreed to supply area 3 with about 45 hand mimeograph machines.

Q. I am not familiar with this at all. Will you state generally what they are?

A. You have—the conventional mimeograph machine is the drum, put the stencil over it and you work it. It is a flat machine, or a flat board, with a metal plate, and there are two guides on the metal plate you can put in 15 pieces of paper. You have the other part of this machine, you can raise that up, it has two parts and two cross bars, and there is a pad on the top side of it, like linoleum, so that ink shall not penetrate. You can ink from the inside, put the stencil over it and produce leaflets by putting the top down and using a roller, simple operation and slower than the drum machine, but at that time these machines were produced to serve two purposes, first, hiding a drum mimeograph machine is difficult. Here was

a machine you could take apart. You can use the bot-[fol. 340] tom part as a water pitcher or put it on the wall and paste a picture on the other side, and the bar part you can take apart or use it—if one does not exactly know what he is looking for would never dream this is part of the mimeograph machine. That is the kind of machine we sent over to area 3.

Q. Did the Communist Party of the State have these machines in quantity?

A. Yes, we manufactured them in Alerton Avenue in White Plains.

Q. It was made specifically for the purpose?

A. That is right.

Q. Did there come a time you had contact with the defendant Noto again in the Buffalo area?

A. That was the time I came in 1949 to check on the status of the organization of the underground, and also resolve this finalizing, placing of the photo offset high-speed machine.

Q. Was there a discussion between you and Noto about the big machine you had given him?

A. Yes.

Q. What was said to him and what was said to you?

A. The discussion was that the machine was brought up and it was not placed yet. It was held—

Mr. McDonough: I object, I want to know the time [fol. 341] or place.

The Court: He wants to know the time and place.

Mr. McDonough: That is correct.

The Court: At the waterfront?

The Witness: Yes. There was still no permanent place where this machine was to be installed. I asked him whether it would be possible for me to go around with him to look for a place, does he have a place in mind. He said yes, he had one or two places in mind. We went to look at one place in Niagara Falls.

Q. Was Noto with you?

A. He took me up there. This was in the downtown area of Niagara Falls, a two-story building, corner building. This place was upstairs in this building. I think it was either a cleaning place or some kind of tailoring place. We went up there. There was a young fellow there.

Noto spoke to him. I don't know what the conversation was between him and this fellow serving the place. I rejected the place as a possibility where we could put this machine in, first, because it is heavy equipment. It needs a cement foundation. It makes a lot of noise. I rejected [fol. 342] the place after looking around. What transpired between Noto and this person I don't know. All the way back I told him this is not the place. Also we discussed training a person to run this photo offset equipment. He said he had a person who could be trained. At this conversation we were discussing why the person we agreed upon in New York could not get the training. This person was one of the secretaries of the I.W.O. branch.

Q. What are those initials?

A. International Workers Order.

Q. Do you know the name of this fellow?

A. I don't know. I saw him once, it was in the evening. This action did not materialize. I don't know his name, but such person was in consideration to be trained to run this equipment.

Q. Was there any other contact on your visit to Buffalo on this occasion with Noto?

A. I went over to his place where he lived, just moved in there recently. I was here three or four days, something like that. These are the things that stand out in my mind. I don't recall the detail of everything that happened.

Q. Do you have a recollection as to what, if any, advice you gave the defendant concerning his problem [fol. 343] of failing to fill up these levels of the three system, did you advise him as to any course to follow?

A. Yes.

Q. What did you say?

A. I told him to fill in as many threes as he can in the given cities, Rochester, Syracuse, Albany, Schenectady, Buffalo. I told him not to worry, if he cannot go all the way down to the sixth level from the area because we had a special integration in a similar structure in the educational profession in New York and in the final analysis it will give us a figure of 3,000 or a little over 3,000 of Party members in New York State.

A. That was the goal?

A. Approximately 10 per cent of the Party membership.

Q. Selected people who would be loyal?

A. Who qualified on the basis of certain specifications as to loyalty, steadfastness, etc.

Q. After your meeting with Noto in 1949, what did you next do?

A. I went back to New York, I gave a report to Hal Simon on my trip to Buffalo who was member of the New York State Secretariat.

Q. When did you leave the Party as a member, Communist Party of America?

A. I read about my leaving in the Daily Worker 17th January, 1950.

Q. Was there any other Communist periodical referring to your expulsion from the Party?

A. Yes.

Q. State what that periodical was.

A. That was "For a Lasting Peace and People's Democracy", the official organ of the Communist Information Bureau.

Q. Where is that published?

A. At that time it was published in Bucharest, Rumania, behind the Iron Curtain.

(Thereupon two newspapers marked Government's Exhibits G-45 and G-46 for identification.)

Mr. Henderson: May Mr. McDonough and I approach the Bench?

(Counsel and Court confer at Bench.)

Q. I show you Government's Exhibit G-45, and ask you what that is?

A. This is the "Daily Worker", January 17, 1950, one star edition.

Q. Does that particular issue have any bearing as to yourself personally?

[fol. 345] A. That is right.

Q. What is the connection?

A. There is an article about my expulsion on page 2 of this paper.

Mr. Henderson: I offer it in evidence.

The Court: Daily Worker?

Mr. Henderson: Yes, sir.

Mr. McDonough: I object to it on the ground it is incompetent, immaterial. He said that he read of his expulsion in the Daily Worker. I object to the admission of the Daily Worker, having no binding effect on this defendant and that is the purport of my objection.

The Court: Let me see it. I will receive it, objection overruled.

(Thereupon Government's Exhibit G-45, previously marked for identification, received in evidence.)

Mr. Henderson: I would like to read that article to the jury.

"John Lautner expelled by C.P. as a traitor. The National Review Commission of the Communist Party has [fol. 346] been conducting an investigation to determine how the F.B.I. agents exposed in the Foley Square trial penetrated and functioned in the ranks of the Party.

In the course of its examination, the Review Commission ascertained that several months ago John Lautner, a member of the New York State Review Commission was instrumental in preventing the expulsion of the spy Calomiris, and that he had also recommended a number of untrustworthy individuals for work in the Defense Office during the period of the trial. Further investigation revealed that Lautner himself is an enemy agent of longstanding. A full disclosure will be made at the proper time. In view of the already established facts, the National Review Commission approves the recommendation of the sub-committee which examined the case of John Lautner and hereby expels him from the Communist Party as a traitor and [fol. 347] enemy of the working class. The Review Commission calls upon the Party leadership and membership to heighten their Communist vigilance and to redouble their efforts to safeguard and strengthen the Party."

Q. I show you Government's Exhibit G-46 for identification, and ask you if you can tell what that is?

A. This is the February 3, 1950 edition of "For A Lasting Peace and For People's Democracy", Bucharest organ of the Information Bureau of the Communist and Workers Party.

Q. Does that particular issue, Government's Exhibit G-46, in printed matter refer to yourself personally?

Mr. McDonough: I object to it.
The Court: Objection overruled.

A. Yes, on page 2, column 3, a number of articles, the last article.

Mr. Henderson: I will offer this in evidence.

Mr. McDonough: I assume it is written in the Rumanian language, and I can't read it.

Q. Is it in Rumanian?

A. I read from it. "Party Life", contents are in English. [fol. 348] Q. This is printed in English?

A. English edition of the Communist Information.

Mr. McDonough: I object to it on the ground that it is repetitions and the witness testified he read of his expulsion. Your Honor has allowed the article in the Daily Worker. No proof this defendant had anything to do with the writing of the article.

The Court: It has been testified this is the official organ of the Communist Party.

Mr. McDonough: Communist Information Bureau.

The Court: Yes, I will receive it.

Mr. McDonough: Even though this is an official organ, even though it is an article, it has no competency or materiality as to the issues at this trial as regards this defendant as to whether this man was expelled or why.

The Court: Objection overruled.

(Thereupon Government's Exhibit G-46, previously marked for identification, received in evidence.)

Mr. McDonough: What is the date of that?

Mr. Henderson: February 3rd, 1959. With the Court's [fol. 349] permission I will read this article.

"ROOTING OUT TRAITORS FROM THE RANKS OF THE COMMUNIST PARTIES.

"The New York Daily Worker reports that a special commission of the Communist Party of the United States has expelled from its ranks John Lowther, who has been exposed as a traitor. The Commission has called upon the leadership and members of the Party to display increased Communist vigilance. The Commission continues the Daily Worker, carried out its investigation with the aim

of discovering by what means the F.B.I. agents exposed during the trial of the eleven Party leaders at Foley Square succeeded in penetrating into the Party and in carrying on their activities there. It established that Lowther was an old enemy agent."

Q. In connection with your expulsion from the Party did you receive any type of review or hearing of your expulsion?

Mr. McDonough: I object, immaterial.

[fol. 350] The Court: Read the question.

(Question read.)

Mr. McDonough: I object on the ground the circumstances attendant on this witness have no competency or materiality with respect to the issues in this case.

Mr. Henderson: May I be heard?

The Court: Yes.

Mr. Henderson: One of the proofs in this case is that one of the conditions is that while the Communist Party from time to time for the purposes of its own status be democratic processes, but does not practice them. I think this witness is competent as top Party functionary should denote receiving a hearing.

The Court: We are not concerned whether he was justly or unjustly, received a fair trial. He is your witness.

Mr. Henderson: I won't labor this, but the basis of my asking is this, that the Communist Party sets up certain preliminary procedures in its constitution and reiterates them. The contention of the Government is these are set [fol. 351] up for the purpose of setting up democratic processes, but does not allow them.

The Court: If they were allowed, it would open the door for the defense to set up the defense where they were not allowed. I sustain the objection.

Q. You were expelled and have never been restored to membership?

Mr. McDonough: I object to that, immaterial as to whether he has been restored.

The Court: I overrule the objection.

The Witness: I read about it, and was never restored into membership in the Communist Party.

Q. I want to talk about this periodical "For A Lasting Peace" in the state headquarters in New York City, during that period, 1946, until your expulsion in 1950, had you occasion to see this periodical from time to time?

A. It did not exist in 1946. Shortly after its organization, the Communist Information Bureau, I received all the copies that were available, and from time to time as they appeared, and it was put into my box at the New York [fol. 352] State Headquarters of the Communist Party.

Q. What is the function of this paper, if you know, referring to the "Lasting Peace for People's Democracy"?

A. This paper reflects thinking and policies of the—

Mr. McDonough: I object to this.

The Court: Objection overruled.

A. Worldwide Communist movement.

Q. Can you state whether this paper is printed in other languages than English?

A. It is in other languages.

Q. What is the Communist Information Bureau, and what function does this serve with respect to the Communist Information Bureau?

A. The Communist Information Bureau is an organization set up at a conference in Warsaw in 1947 to have an organization where Communist Parties can exchange experiences—

Mr. McDonough: I object to this, unless this witness was there. I submit he has been allowed to give his opinion as to many things, but I feel if he is going to describe the Warsaw Convention, we are entitled to know whether he was there.

[fol. 353] Q. Have you read records of the official Communist Party of America, periodicals concerning the setting up of the Common Forum?

A. Yes, and besides, quite a number of meetings on top levels in the Communist Party on the aims, purposes, what it is, and what it is not, about the Communist Information Bureau.

The Court: He can tell how that was accepted. He is telling about the organization. He has no knowledge of it. That is based upon the testimony up to now.

Q. In the Communist Party of America, what was the status of the Communist Information Bureau which I understand is commonly called the "Common Forum"?

A. Yes.

Q. How did this particular paper "Lasting Peace for People's Democracy" serve that Common Forum organization?

Mr. McDonough: Objected to.

The Court: Overruled.

A. The organization served the purpose, where Communist Parties can change their experiences and information for the benefit of all Parties and for the benefit of the Communist Party of the U.S.S.R., and reports by Party leaders including the Communist Party of the United [fol. 354] States of America, appeared, published from time to time in the Common Forum, organ for a lasting peace and for people's democracy.

Q. Will you state whether or not the Communist Party of America was officially affiliated with the Common Forum?

Mr. McDonough: When?

Q. During any period of its membership. You said the Common Forum came into being when?

A. In 1947, fall of 1947.

Q. Was the Communist Party of America ever officially affiliated with the Common Forum up to the time you left the Party?

A. There was no form of affiliation on the part of the Communist Party of the United States of America with the Communist Information Bureau. A statement was issued by the National Board of the Communist Party of the United States of America.

Mr. McDonough: I object on the ground he said it was never affiliated with it.

The Court: I sustain the objection.

Q. Do you have a document that you know was officially issued concerning the position of the Communist Party of America in connection with the Common Forum?

A. Yes.

[fol. 355] (Thereupon document marked Government's Exhibit G-47 for identification.)

Q. I show you Government's Exhibit G-47, and ask you what that is?

A. This is the December, 1947 issue of the "Political Affairs".

Q. What is the "Political Affairs" to the Communist Party of America?

A. Political Affairs was the official theoretical organ of the Communist Party of the United States of America published once a month.

Q. Do you find anything in there with respect to a statement by William Foster concerning the Common Forum?

A. I find a statement by the National Board of the C.P.U.S.A..

Q. Does this have to do with respect to the relationship of the Communist Party of America and the Common Forum?

A. That is correct.

Mr. Henderson: I offer that in evidence.

The Court: Received in evidence. We will recess at this time until 2 o'clock.

[fol. 356] (Thereupon Government's Exhibit G-47, previously marked for identification, received in evidence.)

(Whereupon a recess was taken until 2 o'clock P.M.)

[fol. 357] AFTER RECESS, 2 o'clock P.M.

APPEARANCES: Same as before noted.

JOHN LAUTNER, resumed the stand and testified further as follows:

Direct examination. (resumed)

By Mr. Henderson:

Q. We had been talking as we broke off for the noon recess about the part the Communist Information Bureau played in the affairs of the American Communist Party known as Common Forum. I show you two more booklets.

(Thereupon two booklets marked Government's Exhibits G-48 and G-49 for identification.)

Q. Entitled "Political Affairs", and ask you, one dated February, 1948, which is Exhibit G-48 and one dated, do you know the date of this?

A. November, 1948.

Q. Which is Exhibit G-49, and ask you if you can identify these two exhibits?

A. This is "Political Affairs," February, 1948.

Q. Which exhibit is that?

A. 48.

Q. What is the other one?

[fol. 358] A. November, 1948, which is 49.

Q. These booklets are the official organ of the American Communist Party?

A. Yes.

Q. I show you page 1009 of Exhibit G-49, and ask you if that contains a reference to the connection of the Communist Information Bureau to the American Communist Party?

A. It does.

Q. I ask you to look at Government's Exhibit G-48, page 125, and ask you if that contains a statement concerning the Communist Bureau, of relationship to the American Communist Party?

A. It does.

Mr. Henderson: I offer those in evidence.

Mr. McDonough: Received over our continuing objection:

The Court: Objection overruled.

(Thereupon Government's Exhibits G-48 and G-49, previously marked for identification, received in evidence.)

Mr. Henderson: With the permission of the Court, I will read excerpts from Exhibit G-47, Political Affairs of December, 1947. I am going to read excerpts from Ex-[fol. 359] hibit G-36, Political Affairs of March, 1948.

The Court: 36?

Mr. Henderson: Yes, sir. Political Affairs of March, 1948. That is already in evidence. From Exhibit G-49, Political Affairs, November, 1948, finally from G-48, the February issue of Political Affairs.

Mr. McDonough: Would you mind indicating as you read which exhibit?

Mr. Henderson: Yes, I will start with reading from G-47, Political Affairs, December 1947, page 1141. This is a statement on the question of affiliation to the Information Bureau of the nine Communist Parties, which is issued by the National Board of the Communist Party of the United States, statement issued November 2, 1947, the first paragraph:

"The establishment of an Information Bureau by nine Communist Parties of Europe is of great significance. This provision for a medium through which these Parties can [fol. 360] consult and, if they deem it desirable, co-ordinate activity, has heartened anti-fascists, anti-imperialists and lovers of peace in every land."

I am skipping a couple of paragraphs.

"Considering the question of whether or not to seek affiliation to the new Information Bureau, the National Board of the Communist Party has concluded that the present political situation in the United States is such that the Communist Party should not affiliate. The reactionary and pro-fascist forces now whipping up anti-Communist hysteria and war incitement in our country would undoubtedly seize upon such action by the American Communist Party as a pretext for new provocations and repressions against the Communists and all other sections of the American Labor and Progressive Movement."

Reading from "Political Affairs" February, 1948, Exhibit G-48, there is an article on page 125 entitled

[fol. 361] "THE ACTIVITIES OF THE CENTRAL COMMITTEE OF THE COMMUNIST PARTY OF THE SOVIET UNION (BOLSHEVIKS)", by George M. Malenkov. It states

"Reprinted from 'For a Lasting Peace, for a People's Democracy, Organ of the Information Bureau of the Communist Parties in Belgrade, No. 2, December 1, 1947.'"

Q. I will ask you, who is George Malenkov as of February, 1948?

A. George Malenkov was the first secretary, to the General Secretary, which was Joseph Stalin of the Communist Party of the Soviet Union.

Mr. Henderson: 144 of this article by Malenkov.

"In concluding my report, I wish to dwell on the question of contact between Communist Parties. As is generally known, following the dissolution of the Comintern in 1943; contact between fraternal Communist Parties was interrupted. Experience has shown that lack of contact between Communist Parties deprives both the C.P.S.U. (b) and [fol. 362] other Communist Parties of the opportunity to exchange necessary and mutual information and elaborate common views on the cardinal questions of the Labor and Communist Movements. The absence of contact between Communist Parties is a hindrance in co-ordinating the actions of Communists in various countries in their resistance to the plans of the imperialists, particularly now, when American Monopoly Capital is organizing an offensive against Communism and democracy, against the U.S.S.R. and the new democracies, developing its expansionist plans with the intention, under the guise of aid, of enslaving a number of European and other countries, and when Communists are called upon to define their attitude to these plans of American imperialism.

"In our opinion, it is necessary to put into effect definite measures designed to eliminate the present abnormal situation in this respect.

[fol. 363] "That is why we consider it necessary to discuss at the present conference both the International situation and the question of improving contact between Communist Parties, of establishing regular connections between them with a view to achieving mutual understanding, exchange of experience and voluntary co-ordination of activities of

the Communist Parties whenever they consider this necessary."

This from Exhibit G-36, "Political Affairs", March, 1948. This is an article under the title "The Role of the Communist Party in the present Situation by Eugene Dennis." It states:

"Concluding section of the report on the political situation in the U.S. and the tasks ahead, delivered at a meeting of the National Committee, C.P.U.S.A., 1d February 3-5, 1948."

Q. Eugene Dennis in 1948 had what capacity as a functionary in the American Communist Party?

A. He was General Secretary of the Communist Party of the United States of America.

Mr. Henderson: Page 223.

"If, in this decisive year of 1948, we are to avoid vacillation, sectarianism, and opportunist mistakes, we, all of us, must live and breathe the science of Marxism. We must acquire a new and more profound grasp of the theory and lessons to be learned from such Marxist classics as the Communist Manifesto, Lenin's Imperialism, Stalin's Foundations of Leninism, Dimitroff's Report to the Seventh World Congress, and the History of the C.P.S.U., as well as from such authoritative Marxist political journals as the new publication of the Communist Information Bureau, For a Lasting Peace, For a People's Democracy."

Finally, Exhibit G-49, "Political Affairs", November, 1948, page 1010. This is an article entitled "Approach- [fol. 365] ing the 30th anniversary of the Communist Party, U.S.A."

"Again, in 1945, the Communist Party of the U.S.A. was confronted with the menace of Browder revisionism and liquidationism. The Party's Marxist-Leninist theory was being replaced with non-Marxist and anti-Marxist ideas and theories, and the Party itself was in fact being liquidated. And once more, the loyal and devoted Party forces, the healthy Marxist and working class elements rose to the defense of the Party and its Marxist-Leninist theory. Browderism was condemned and rejected and a broad

ideological struggle against it initiated. The fight against the theoretical and political sources of Browderism must continue. It must become intensified in the light of the historic ideological and political struggle, initiated by the Communist Information Bureau and waged by all Communist [fol. 366] nists, against the anti-Marxist, anti-Leninist, bourgeois nationalist positions of the leaders of the Yugo Slav Communist Party."

Q. Are you familiar with, generally, with reference to the Yugo Slav Communist Party, in what way it had opposed the view to the Communist Party of the Soviet Union?

A. Yes.

Q. State what this agreement there was between the two.

A. Yugo Slav Communist Party was expelled from the Communist Information Bureau. Its leaders, Tito, Kardelj, Rankovich, Biade and others were branded fascists, mad dogs and agents of materialism and monopoly capitalism. A lot of so-called Tito policies branded by other Communist Parties were expelled from Communist Parties, were shot, were hanged.

Mr. McDonough: I object to that, if the Court please, prejudicial. There is no proof John Noto shot or hanged any of the Yugo Slav—

The Court: The testimony is not to the effect he did.

Mr. McDonough: I object, prejudicial.

The Court: I think it is a matter of expert opinion. I shall receive it.

[fol. 367] Mr. McDonough: Exception.

The Witness: Such leaders of the Communist Parties, like Rajak in Hungary and a corps of others with him in the Hungarian Communist Parties, leaders in the Czechoslovakia Party, leaders in the Bulgarian Party, leaders in the Polish Party in manifestation on the part of Party leaders in this country, and particularly Yugo Slavia, who refused to bend under Stalin's leadership.

Mr. McDonough: All over my objection.

The Witness: Who refused to bend under Stalin's leadership, under the thumb of Stalin's leadership in this period 1947, 1948 and 1949, were cleaned out from these

Communist Parties and branded as traitors and enemies of the working class and agents of capitalism in the ranks of capitalism.

Mr. Henderson: Mark these.

(Thereupon copies of newspapers, were marked Government's Exhibits G-50 through G-62 for identification.)

Q. I want to show you Government's Exhibit G-50 [fol. 368] through G-62, each of which appears to be a copy of "For a Lasting Peace for a People's Democracy", which you have described as the official organ of the Common Forum. Look at those and state whether or not during your time as a functionary in the headquarters of the Communist Party in New York City you received copies of those exhibits for identification?

A. Yes, these are copies of 1948 and 1949 issues of "For Lasting Peace for a People's Democracy" that I received at the time they were published in my official capacity in my mail box in the Party Headquarters in New York, 35 East 12th Street, in New York.

Mr. Henderson: I offer those in evidence.

Mr. McDonough: Objected to on the grounds previously stated.

The Court: Objection overruled.

(Thereupon Government's Exhibit G-50 to Government's Exhibit G-62, inclusive, previously marked for identification, received in evidence.)

Mr. Henderson: I am not going to read from any of these at this time, if the Court please. I would like to read some time later.

Q. You have talked about the Constitution of the Communist Party of the United States of 1945. We talked [fol. 369] about the same type of constitution of the Party for 1948. Giving attention to Exhibit G-41, which is the constitution of 1945, I want to read you the first paragraph, first sentence of the paragraph: "The Communist Party of the United States is the political Party of the American Working Class, basing itself upon the principles of scientific socialism, Marxism-Leninism. It champions the immediate and fundamental interests of the workers, farmers

and all who labor by hand and brain against capitalist exploitation and oppression. As the advanced party of the working class, it stands in the forefront of this struggle.

"The Communist Party upholds the achievements of American democracy and defends the United States Constitution and its Bill of Rights against its reactionary enemies who would destroy democracy and popular liberties. It uncompromisingly fights against imperialism and colonial oppression, against racial, national and religious discrimination, against Jim Crowism, anti-semitism and all forms of chauvinism."

Based on your experience, approximately 20 years in the Communist Party as a member and many official positions [fol. 370] you have had in the Party, National Committee meetings, and conventions you have attended, National Training School you attended and other Communist Party activities you attended, and the schools which you established and taught, will you state what in the light of your experience paragraph No. 1 with respect to the Party basing itself on Marxism and Leninism, what understanding is there as to the meaning of that paragraph and the meaning of the second paragraph where the Party generally takes the position of supporting our constitution?

Mr. McDonough: I object to this on the ground the United States Attorney is calling upon this witness to be a mind reader. I don't think he is qualified. He has testified concerning what he was doing, what he did. To attempt to elicit from this witness an understanding of the Communist Party with respect to these two paragraphs, I submit is far from—I object; further, Exhibit 41 speaks for itself. It is not a proper subject for expert testimony.

Mr. Henderson: May I be heard?

The Court: Yes.

[fol. 371] Mr. Henderson: I would like to make reference to the opinion of the cases—

The Court: I have read it.

Mr. Henderson: May I allude to the last paragraph. This was the testimony of—

The Court: Second Circuit.

Mr. Henderson: That is right. "As to the rule against conclusion, it is at most only one of convenience in this case from (reading from citation) on their face."

Mr. McDonough: I object to this recitation of some other witness in some other case.

The Court: This is a question of law as applying to expert testimony.

Mr. McDonough: He is reading some other witness in some other case.

The Court: It deals exactly with the situation.

Mr. McDonough: I have read the decision. I object to the United States Attorney reading it.

The Court: You need not read it. I have read it. I overrule the objection. I think it is the subject of expert testimony under the ruling of U. S. vs. Dennis.

Mr. McDonough: Exception.

{fol. 372} Q. Will you take Exhibit G-45 and state what the initiate of the Communist Party and the understanding in the law of those two paragraphs?

Mr. McDonough: I don't know this is just exactly the question asked.

The Court: What I understand the purport of the question is, what is the common understanding of members of the Party. That is what I understand the question to mean.

The Witness: The first paragraph establishes in 1945 the Communist Party goes back to Marxism and Leninism. The second paragraph states that the Communist Party upholds the elements of American democracy, defends the United States Constitution, Bill of Rights against its reactionary enemies who would destroy democracy and popular liberties. There is a contradiction between these two concepts.

Mr. McDonough: I object to this, he is now giving his opinion. He is not telling us what every member of the {fol. 373} Party understood.

The Court: We want to know how that passage was commonly understood by members of the Communist Party of the U.S.

The Witness: You cannot be for Marxism and Leninism on one hand, and uphold the Constitution and Bill of Rights of an imperialist government just destined to be destroyed on the basic principles of Marxism and Leninism. This is plain double talk.

Mr. McDonough: I move to strike it out on the ground it is not within the scope of the question, the last characterization.

The Court: I did not understand it was a characterization. If it was I will strike it out. Do you mean that was commonly understood to be double talk?

The Witness: That was my understanding as leading Party member at the 1945 convention.

The Court: That was not the question. The question was, what was the common understanding of the members of the Party.

[fol. 374] The Witness: I would have had to solicit the understanding of every member.

The Court: I shall strike out the answer, then. Strike it all out.

Mr. McDonough: Entire testimony?

The Court: Yes, I understood he was giving common understanding of members of the Party. Now it appears he is giving his own understanding.

Mr. McDonough: May I ask that the jury be instructed to disregard the answer?

The Court: The jury is instructed to disregard the answer to the last question.

Q. With respect to the answer you gave, I don't think you understand, you are not expected to hold an opinion of all Communist members, I ask you whether or not you have from your experience over twenty years, what was taught to you, what you read, what you taught, your contact with the members, whether you have an opinion on the common understanding of the terms of the constitution before you in the paragraphs 1 and 2, a common, general understanding of Communists as a group?

Mr. McDonough: I object to it on the ground he is not [fol. 375] qualified to express such an opinion because of his last answer to which your Honor ordered the testimony be stricken.

The Court: Objection overruled.

Q. Do you have such an opinion of a common understanding?

A. Yes, I expressed that opinion.

Q. With respect to the 1948 constitution, Exhibit 42, is

the preamble the same, first two paragraphs, as contained in the 1945 constitution?

A. Yes, it is exactly the same.

Q. With respect to the 1948 constitution which convention you attended, is your opinion the same or different respecting the general concept of the Party initiate as to the meaning of the two paragraphs?

Mr. McDonough: I object to the form of the question.

The Court: Objection overruled.

The Witness: 1948, when this constitution was adopted, my opinion was the same.

Mr. McDonough: May I be clear? Frankly I don't know as I understand where we are. The Court ordered 'the witness' entire testimony with respect to his own understanding of the difference between the preamble of the 1945 constitution, Exhibit G-41, ordered it stricken. Now [fol. 376] he says his opinion is the same. I object to it.

The Court: I struck out his testimony, then the United States Attorney asked him if he had an opinion of the common understanding of the members of the Party regarding the passage that was read. He said "I have given it." In other words, he had given his opinion of the common understanding. That qualified his testimony that he was giving his personal opinion.

Mr. McDonough: Do I understand the answer stands?

The Court: Yes.

Mr. McDonough: Exception.

Q. So there will be no question about it, in the light of your common understanding, from your experience, what is your opinion about the initiates concept of the two paragraphs we are discussing in the constitution.

Mr. McDonough: I object, repetitious. I don't think he ought to be allowed to repeat it.

The Court: I will receive it. You do have now an opinion [fol. 377] as to the common understanding of the members of the Communist Party with regard to the passages that have been read?

The Witness: Yes.

Q. State that opinion?

A. Well, the Party undoubtedly, without any mistakes and on Marxism and Leninism—

Mr. McDonough: Where are we?

Mr. Henderson: 1945.

A. 1945 and 1948, went back to Marxism and Leninism in 1945, it reaffirmed its position in 1948 to base itself on Marxism and Leninism. The second paragraph is protective language.

Mr. McDonough: This is all over my objection.

Q. At page 20 of the 1945 constitution, Exhibit No. 42, and at page 20 of the 1948 constitution, Exhibit No. 41, there are paragraphs in each one of those constitutions at page 20, in the 1945 constitution, the following is found, Section 2: "Adherence to or participation in the activities of any clique, group, circle, faction or party which conspires or acts to subvert, undermine, weaken or overthrow any or all institutions of American democracy, whereby the majority of the American people can maintain their right to determine their destinies in any degree, shall be punished [fol. 378] by immediate expulsion."

In the 1948 constitution, page 20, "Any member shall be expelled from the Party who is found to be a strike-breaker, provocateur, engaged in espionage, or who advocates force and violence or terrorism, or who adheres to or participates in the activities of any group or Party which conspires or acts to subvert, undermine, weaken or overthrow any or all institutions of American democracy through which the majority of the American people can maintain their right to determine their destinies."

Again in the light of your twenty years of experience in the Communist Party as member, as holder of high positions, your attendance in schools, National Committee meetings, the teaching you did in the schools, can you state an opinion as to how these two paragraphs are understood by initiates of the Communist Party?

Mr. McDonough: Same objection.

A. Yes.

The Court: Objection overruled.

Mr. McDonough: Exception.

The Witness: In the 1948 constitution, in this paragraph there was an insertion of more protective language, in the [fol. 379] words here, "Who advocates force and violence".

Mr. McDonough: If the Court please, I object on the further ground it does not *two* an expert to point that out. That is obvious from reading the two paragraphs.

The Court: It is not obvious it is protective language. The gist of his testimony is it was his opinion it was commonly understood to be protective language. In other words, language which was meant to clarify something else, or to protect something else. I think it is a subject of expert testimony. I shall receive it.

Q. This protective language, is there a concept known as, in Communist Party circles, aesopianism, or a similar term?

A. Yes.

Q. What does that mean?

Mr. McDonough: I object to it on the same ground.

The Court: This calls for a definition of the term.

Q. Yes. You are familiar with it as a term used in Communist Party circles?

[fol. 380] A. Yes.

Q. State what it is as used in the Communist Party.

A. Aesopianism was a Greek writer who wrote fables—

The Court: What we are interested in first, is, it was used in Communist Party, and if it was used, what was the understanding of its meaning?

The Witness: The meaning of it was to acquire a figure of speech that would seal the real aim and purpose and would be at some time acceptable and not deductible only by the real initiates. Aesop who was the master in speaking in fables, in animal life. When I went to school, the frog and the bull—

The Court: Aesop's fables?

The Witness: Yes. There are a number of references to this type of allusion. Lenin makes a reference to it in materialism which is part of the Little Lenin Library series. One of the secretaries, Monwelski chided the Italian Communist Party for not mastering the artful use of aesopianism in Italy. Lenin in "Left Wing Communism and Infantile Disorder" makes references to Communist conduct in the trade union movement so that under any and all conditions they must cheat,

subterfuge and all kinds of deceptive methods to remain in the trade union. These are some of the examples where aesopianism is used and practiced in the Communist Movement.

Q. I show you Government's Exhibit G-17, entitled "Imperialism, the Highest Stage of Capitalism" by V. I. Lenin, the 7th, do you find a reference in there to this aesopianism?

A. Yes.

Mr. Henderson: I would like to read a very short paragraph from this page, which is Exhibit G-17, page 7.

"This pamphlet was written with an eye to the Tzarist censorship. Hence, I was not only forced to confine myself strictly to an exclusively theoretical, mainly economic analysis of facts, but to formulate the few necessary observations on politics with extreme caution, [fol. 382] by hints, in that aesopian language, in that cursed aesopian language, to which Tsarism compelled all revolutionaries to have recourse whenever they took up their pens to write a legal work."

Foot-note, "Aesopian, after the greek fable writer Aesop, was the term applied to the allusive and roundabout style adopted in legal publications by revolutionaries in order to evade the censorship."

Q. Once more, based upon your experience of twenty years in the Communist Party as a member, many official positions you have held, National Committee meetings, National conventions, and the plenums that you have attended nationally, training schools you attended as a student, and other Communist schools that you attended, and the other schools which you established and taught, can you state what is the ultimate aim and objective of the Communist Party of the United States of America?

Mr. McDonough: I object on the ground this kind of asking this man as an alleged expert, takes from the jury one of the ultimate questions of fact to be determined. [fol. 383] I object, not a proper subject for expert testimony.

The Court: I overrule the objection. I rule explicitly in my opinion it is the subject of expert testimony.

Mr. McDonough: Exception.

The Witness: The ultimate aim of the Communist Party of the United States is to destroy capitalism, monopoly, capitalism, materialism, give certain objective and subjective conditions two sets of conditions. Objective conditions on one hand are if there is a crisis, economic crisis or a war, a situation where the Government is not able to exert its opinion and function with the established accepted methods, when sections of the population are dissatisfied with the existing conditions. In this crisis there is a wide dissatisfaction. These are one set of conditions. On the other hand, if paralleled with this situation, following subjective conditions are present. 1, that the [fol. 384] Communist Party is the vanguard, the leader of the decisive sections of the working class. In addition to that, the Communist Party has influence over wide sections of the so-called allies of the working class, like poor farmers, negro people. In addition to that when the Communist Party succeeded in neutralizing sections of the population amongst the lower middle classes, when these two conditions exist, on one hand objective and the subjective conditions, the Communist Party is ready to challenge and aims to destroy capitalism, monopoly capitalism, and achieve its final objective, establishment of socialism through the dictatorship of the proletariat.

Q. In that final stage what will the Party resort to with respect to force and violence?

Mr. McDonough: I object to it, if the Court please, on the ground it is speculative.

The Court: I want it clear. You are asking for his opinion.

[fol. 385] Mr. Henderson: That is correct.

A. This change, and the establishment of the dictatorship of the proletariat, particularly in a highly developed country like the United States, cannot be achieved peaceful. It will be achieved by force, challenge and violence and power will be wrested from the hands of those that had power under capitalism in the United States today.

Q. Was there any change in the basic aim and objective of the Communist Party during the course of your membership from 1929 to 1950?

Mr. McDonough: Objected to on the same ground, the witness is not qualified, not a proper subject. I believe I should object to each one of these questions.

The Court: You don't need to object to each one, because your objection is broad enough to cover the whole line of testimony. He has already testified to revisionism in 1945. Do you want to reiterate that? He has already testified there was a change. Revisionism was rejected and Marxism and Leninism restored.

Q. In answer to that previous question, you stated one of [fols. 386-395] the objectives was violent overthrow of the imperialistic government. Are you referring to any specific government?

A. In this instance, the government of the United States, which is the government of the leading imperialist country of the world today.

Mr. Henderson: You may examine.

Cross-examination.

By Mr. McDonough:

Q. Are you being paid as an expert witness?

A. I am being paid as a witness.

Q. How much are you being paid?

A. I get, five-day week, about \$125.00 a week.

Q. For how long have you been receiving \$125.00 a week from the United States Government?

A. Since about the beginning of 1951. I must also [fol. 397] state when I did not work for the Government I did not get any pay.

Q. You have been receiving pay from the Government since 1951?

A. Approximately.

Q. \$25.00 a day?

A. When I report.

Q. In addition to that what other remuneration did you receive?

A. When I am not at the station of my assignment, out of town, I get in addition to that a per diem.

Q. How much?

A. It was \$9.00 a day, it was raised a few months ago to \$12.00.

Q. Have you had any other work in the last five years?

A. No, nothing to speak of.

Q. Not to speak of?

A. Nothing—I did odd little things, like laying bricks once in a while. My only source of income was from the Government.

Q. How much did you earn from the Government in the year 1955?

A. \$5700, approximately.

Q. That was in addition to your expenses you told us about at \$9.00 a day?

[fols. 398-415] A. Yes.

Q. How much did you earn during the year 1954?

A. About the same amount.

Q. Can you tell us exactly?

A. About \$5900.00.

Q. That would be close to \$6,000.00, is that correct?

A. Yes.

Q. In addition to that, the expenses which you told us about?

A. That is correct.

Q. How much did you earn in 1953?

A. About \$4,000.00, some odd hundred dollars, I don't know the exact figures.

Q. You don't know exactly?

A. No. In addition to that my per diem.

Q. You have done no other work?

A. That is correct.

[fol. 416] By Mr. McDonough:

Q. That was part of your teachings of the application of principles of Marx, Lenin, were in all respects depending on conditions there present?

A. As it states, time, place and circumstances.

Q. That is what you taught?

A. That is correct.

Q. Were you taught, and did you teach later one should never cling to a theory of yesterday which has no application to present-day condition?

A. As far as tactics are concerned, that is a hundred per cent correct.

Q. You were taught that and you taught it?

A. That is correct.

Q. Were you also taught that certain passages of Marxist-Lenin writings could not, should not apply to any and all situations?

A. That is correct.

Q. You were taught along the lines of Marxism that a [fols. 417-439] socialistic form of government was better economically than a capitalist form of government?

A. It was according to Marx-Lenin, it was a higher stage in the development of society.

Q. You were taught it was a superior economic system?

A. At the beginning not necessarily, it is a higher stage eventually, it is a better system of society.

Q. We have been using the word "proletaria revolution", used by various authors. May the proletaria revolution be defined as a fundamental change in the relationship of forces to the economic base of society, that is, to the means of production and the source of raw material?

A. That is correct.

Q. Is that a correct and fair definition of the proletaria revolution?

A. That is generally a correct and fair definition, a fundamental change to the means of production. What the fundamental change is should be defined.

[fols. 440-520] PROCEEDINGS OF APRIL 4th, 1956, at 10 o'clock A.M.

[fol. 521] By Mr. McDonough:

Q. Whatever the aims, objects and purposes of the Communist Party were, they did not change between 1948 and 1949, did they?

A. They did not change from 1929 to 1950 until I left the Party.

Q. In your opinion the aims and objectives of the Party were the same in 1949 as 1948?

A. That is correct.

Q. At least up to 1949, the Party had what you describe as a legal status, did it not?

A. Yes.

Q. You told us they ran candidates for public office as late as 1949?

A. I did not so say.

Q. Didn't we agree this morning Benjamin Davis ran for re-election as Councilman in 1949 and was defeated?

A. He may have. I have no recollection.

Q. Anyway, you know that there were Communist City Councilmen in New York City as late as 1947 and 1948?

A. Yes.

Q. The reason for what you have described as under-[fol. 522] ground preparations, was the indictment of top Party leaders?

A. It was not the main reason.

Q. Was it one of the reasons?

A. It could have been one of the reasons, to accelerate in building it.

Q. At any rate, following the indictment of the top Party leaders in 1948, you say you were given instructions with reference to preparations to set up an organization to function as underground?

A. That is correct.

Q. You have described some of the things you did in 1949?

A. That is correct.

Q. You told us you had certain County leaders in New York?

A. That is correct.

Q. You told us that one of those County leaders came in with the defendant John Noto?

A. He was sub-district organizer at the time.

Q. What time in 1949 was it?

A. To the best of my recollection it was the beginning of February, 1949.

Q. At that time you gave the County leader certain instructions?

A. That is correct.

Q. You told him that if the membership questioned them anything about the organization, they were to be informed [fol. 523] the Party was alert to the situation and would take steps as you described?

A. Take steps.

Q. Did you also inform them what the purpose of this underground organization was?

A. I think I did, yes.

Q. Did you tell them as of the time of these instructions the Party had no legal status?

A. I did not tell them that.

Q. Did you tell them this in substance, that the purpose of your instructions and that the purpose of the underground movement was to attempt to restore the Party to a legal status? Did you instruct them that?

A. I may have raised that issue also, but main—

Q. Did you tell those Party leaders that the purpose of this underground organization was to fight the Party's way back to a legal status?

A. One of the reason given, not the main reason.

Q. Did you tell them that?

A. Yes, not in those words. In case the Party had been driven underground.

Q. The Party had not been driven underground yet?

A. That is correct.

Q. What you had anticipated was the Government prosecutions of the Smith Act on driving the Party underground?

[fol. 524] A. It was one of the considerations.

Q. You told the leaders you wanted the Party to fight the way back to a legal status?

A. As one of the considerations.

Q. By "legal status", you meant it could nominate candidates?

A. To a legal status, in case it is being driven underground.

Q. Your plans were aims towards the possible future date when the Party may be driven underground?

A. Not exactly.

Q. You wanted to insure continued unity of the Party?

A. I wanted to insure there would be an organized force

in the Party that can carry on under any and all conditions.

Q. To fight its way back to a legal status?

A. In case the Party should be legalized, this force was there to fight back into legality, one of the considerations.

Q. You did not know whether that circumstance would arise or not?

A. At that time I had certain fears that a situation like that would develop.

Q. This was 1949?

A. That is correct.

[fol. 525] Q. This is the time you had talked about some photo offset printing?

A. Later.

Q. Same year.

A. The same year.

Q. A few months before you left the Party?

A. That is correct.

Q. Get down to the time, later in 1949, when you said you talked to Noto about this photo offset printing, and when you came to Buffalo, did you see the machine?

A. In October, 1949, it was covered up with a tarpaulin. I did not see the machine. I saw where it was.

Q. You say you saw where this machine was?

A. What I took to be whatever I saw was something covered up with a tarpaulin.

Q. You went to Niagara Falls with Noto and discussed possible office?

A. Possible premise, where a photo offset machine would plan in with the frontings.

Q. You did not like it?

A. I did not.

Q. You said Noto had a talk with some young man?

A. I saw him with a young fellow on the premises.

Q. Did you see him talking to him?

A. Yes.

[fols. 526-544] Q. You don't remember him?

A. I was not in the conversation. He was doing the talking.

Q. Did you ever thereafter see that printing press?

A. No.

Q. You have described certain mimeograph machines which you and the New York people discussed?

A. That is correct.

Q. Did you ever see any of them in Buffalo?

A. No.

Q. With respect to the purposes of the printing, whether it be merely mimeograph machine or the larger photo offset printing press which you described as being intended for the Buffalo area, the purpose of those presses would be to continue printing of leaflets and documents by the Party should public or legal printing facilities be no longer available?

A. That is correct.

Q. If the Party reached the point where the printers would no longer print this literature or publishing concerns, like the "Daily Worker" or New Century Publishing Company, then the so-called underground presses either mimeographing machines or offset printing plant would be available?

A. As one of the considerations.

[fols. 545-546] Q. How much were you getting as a functionary employee of the Communist Party of the United States in 1949?

A. My nominal wage was \$60.00 a week, plus an expense account, and additional expenses from time to time.

Mr. McDonough: That is all.

Redirect examination.

By Mr. Henderson:

[fol. 547] Q. Mr. McDonough asked you in cross-examination about a man by the name of William Z. Foster, in substance, he is the Foster that had been candidate for the Communist Party for President in 1928 and 1932, and I [fol. 548] ask you whether you had read certain writings, some of which you said you had read, some of which you said you had not read. Mark this.

(Thereupon document marked Government's Exhibit G-63 for identification.)

Q. I think you also were asked and stated, and you returned the answer that in 1945 and 1948, the two convention years, this William Z. Foster was one of the National Secretariats?

A. He was a member of the National Secretariat from 1945 convention time up to about 1946, when the secretariat was then dissolved, elected a general secretary and National Chairman.

Q. What about 1948?

A. He was National Chairman of the National Committee of the 13 that was elected in the 1948 convention.

Q. I show you Government's Exhibit G-63 and ask you what that is?

A. This is a book by William Z. Foster, entitled "Toward Soviet America" by International Publishers, New York.

Q. What date was it published?

A. The copyright is in 1932.

Q. Is that the year William Z. Foster was the Communist candidate for President of the United States, in 1932?

A. Yes.

[fol. 549] Q. This is the same man who wrote this book, "Capitalism"?

A. That is right.

OFFER IN EVIDENCE

Mr. Henderson: I offer this in evidence.

Mr. McDonough: May the record show this is, and that the book is from either the Buffalo Public or some other library?

Mr. Henderson: "If the record wants to show there are some markings on the book cover, it also shows it is the property of the Federal Bureau of Investigation.

The Court: The book should go in evidence and you can read anything you want to.

Mr. McDonough: I withdraw my statement, it is from the Buffalo Public Library.

The Court: Received in evidence.

(Thereupon Government's Exhibit G-63, previously marked for identification, was received in evidence.)

Mr. Henderson: I would like the permission of the Court to substitute a photostatic copy of this book, which I

will show to Mr. McDonough. This is the same man, William Z. Foster, who wrote the article against revisionism [fol. 550] in the Communist Party, following the letter of Browder leadership.

The Court: We are only talking about one Foster.

The Witness: That is right.

The Court: Whenever that name appears that is

The Witness: That is Foster.

Mr. Henderson: Under Chapter 5, page 268, entitled "United Soviet States of America," reading at page 269 "From Capitalism to Communism, through Intermediary stage of socialism, that is the way American society, like society in general is headed. It represents the main line of march of the human race to the next higher social stage in its historical advance. It is the trend to which all the economic, political and social forces of today are contributing. The American Revolution, when the workers have finally seized power, will develop even more swiftly in all its phases than has the Russian Revolution. This is because in the United States objective conditions are more ripe for revolution than they were in Old [fol. 551] Russia."

Page 271, until the title "The American Soviet Government. When the American working class actively enters the revolutionary path of abolishing capitalism it will orientate upon the building of Soviets, and upon the adaptation of the existing capitalist government. Capitalist governments have nothing in common with proletarian governments. They are especially constructed throughout to maintain the leadership of the bourgeoisie.

In the revolutionary struggle, they are smashed and Soviet governments established, built according to the requirements of the toiling masses."

At page 274 "In order to defeat the class enemies of the revolution, the counter-revolutionary intrigues within the United States and the attacks on foreign capitalist countries from without, the proletarian dictatorship must be supported by the organized armed might of the workers, soldiers, local militia, etc. In the early stages of the revolution even before the seizure of power, the workers will organize the Red Guard. Later on this loosely constructed body becomes developed into a firmly-

knit, well disciplined red army. The leader of the revolution in all its stages is the Communist Party. With its main base among the industrial workers, the Party makes a bloc with the revolutionary farmers and impoverished city petty bourgeoisie, drawing under its general leadership such revolutionary groups and organizations as these classes may have. Under the dictatorship all the capitalist parties, Republican, Democratic, Progressive, Socialist, etc., will be liquidated, the Communist Party functioning alone as the Party of the toiling masses. Likewise will be dissolved all other organizations that are political groups [fols. 553-560] of the bourgeoisie rule, including Chambers of Commerce employer's associations, Rotary Clubs, American Legion, Y.M.C.A., and such fraternal orders as the Masons, Odd Fellows, Elks, Knights of Columbus, etc."

[fol. 561] Q. What are the tactics from the Communist Party line designed to accomplish?

Mr. McDonough: I object to it on the ground "tactics" has a dictionary meaning. That is not the proper subject of expert testimony.

The Court: Objection overruled.

The Witness: Tactics at all times are employed to bring closer the realization of the basic objective, basic aims of [fols. 562-566] the Communist Party, depending on time, places and circumstances. Tactics change basic aims not until they are realized.

Q. Reading from Page 91, the same exhibit, G-27. I believe Mr. McDonough read to you the following: "Guarantee to all peoples the right to determine freely their own destiny and to establish their own democratic form of government."

In the light of the experiences I have related before that you have had, and your attendance at the convention where this was adopted, can you state whether or not that statement was a tactical statement of the Communist Party of America?

Mr. McDonough: Same objection.

The Court: Objection overruled.

The Witness: Tactical statement with an eye on realizing the basic aims of the Party, establish socialism via the dictatorship of the proletariat and smashing the bourgeois state machine.

[fol. 567] ALLEN DIETCH, called as a witness by and in behalf of the Government, having been first duly sworn, testified as follows:

Mr. Henderson: With the permission of the Court, Mr. White will examine this witness.

Direct examination.

By Mr. White:

Q. Where do you reside, Mr. Dietch?

A. 71 Gainsboro Road, Rochester, New York.

Q. How long have you lived in Rochester?

A. All my life.

Q. Are you married?

A. I am.

Q. Do you have any children?

A. Two.

Q. How old are you?

A. I will be 38 next week.

Q. What is your education?

A. I am a high school graduate. I have had a couple of courses at the University of Rochester Extension Division, one in journalism, one in business management. I have had courses in industrial sales training, machine shop practice and trigonometry. at Rochester Institute of Technology.

Q. Do you know the defendant in this case?

[fol. 568] A. Yes.

Q. If you see him in the court room, will you point him out?

A. He is sitting over there.

Q. When did you first meet the defendant?

A. September, 1931.

Q. Where was that?

A. We were in the same home room in Junior High School.

Q. Did there come a time you met Mr. Noto in another connection?

A. Yes.

Q. When was that and where?

A. It was also in Rochester, a couple of years later, as a result of our activity in the Young Communist League in Rochester.

Q. You were both members of the Young Communist League?

A. Yes.

Q. How many branches were there of the Young Communist League in Rochester at that time?

A. Just one that I am aware of.

Q. Did that have any name?

A. At one time it had the name of John Field Branch.

Q. When was that?

A. 1937 or 1938.

Q. During what period was your membership in the [fol. 569] Young Communist League?

A. About from 1933 to 1938.

Q. During what period of your membership was the defendant also a member?

A. He was a member during the same period I was.

Q. What was the Young Communist League at that time?

A. It was Youth Army of the Communist Party, it was a training ground for young people in the principles of Marxism and Leninism, and to school them to be future Party members.

Q. How often did you attend Young Communist League meetings in the period of your membership?

A. They were generally a couple or three meetings of various kinds in the course of a week.

Q. Was there anyone present other than Young Communist League members?

A. Yes, there was generally a leader present, he was what we used to refer to as a Party rep, a representative from the Communist Party to the Young Communist League.

Q. Can you state who, during your membership, were some of those Party reps?

A. Some of these, a fellow by the name of Donald Nichols, Walter Herman, Phillip Parr was a Party representative to the Young Communist League at one time.

[fol. 570] Q. These people were Communist Party members?

A. That is right.

Q. Where were your Young Communist League meetings held?

A. Generally held in various halls around town. At different times in the Worker's Center on Ormond Street. Lithuanian's Hall, Joseph Avenue in Rochester, Ukranian Hall, sometimes the Labor Lyceum, sometimes in member's homes.

Q. Are those all the places you recall?

A. There were others.

Q. Did you attend Young Communist League meetings with the defendant?

A. Yes, I did.

Q. Can you give us a percentage of the meetings that you attended, at which you were present?

A. Probably 70 per cent of the meetings I attended, he was also present at that time.

Q. I ask you if you recall an occasion in your Young Communist League activity, when charges of some nature were an issue in your activity?

A. At one time there was a situation in the Young Communist League where the issue of White Shawanism. It was prejudice on the part of white people against colored people.

Q. Where did this incident take place?

[fol. 571] A. As I recall, the Young Communist League at that time was meeting in the Ukranian Hall in Joseph Avenue. It occurred about 1937, possibly 1938.

Mr. Henderson: I don't think the jury is hearing the witness too well. Speak a little louder, please.

Q. Did this issue come up at any particular meeting?

A. Situation developed for some of the older members of the Young Communist League, objected to certain methods of regarding young negroes into the Young Communist League.

Q. Was this discussed at a particular meeting?

A. Yes, it was discussed at two or three different meetings.

Q. What, if any part did the defendant, John Noto, take in this?

Mr. McDonough: I object, only on the ground the crime alleged in this indictment is alleged to have been committed from 1946 on. Now the Government is way back.

The Court: They have done that right along. In order to bring the offense, they have to bring it to the indictment [fol. 572] period. This bears on the question of intent and knowledge. I will receive it on that ground.

A. The defendant as a leading member of the Young Communist League—

Mr. McDonough: I object to that.

The Court: I sustain the objection to the characterization.

Mr. McDonough: I ask to strike it out.

The Court: Strike it out.

The Witness: The defendant laid down the line of the Communist Party on this question to the members of the Young Communist League.

Mr. McDonough: I object. There is—

The Court: I sustain the objection. That is only a characterization.

The Witness: Laid down the line of the Communist Party to the members of the Young Communist League who were involved in this situation, and they were reprimanded.

Q. Who was leader, head of the Young Communist League in Rochester at this time?

Mr. McDonough: I object to this.

The Court: He may make up his mind, if he was [fol. 573] elected leader, that is one thing.

Q. Was there an elected leader in the Young Communist League in Rochester?

A. Yes, we generally had a Young Communist League—

The Court: Was there at this time an elected leader?

The Witness: To the best of my recollection he was, he was the elected leader.

Mr. McDonough: I object to that. First of all, I don't think there was a question. We don't know what the title of the officer was.

The Court: There is a confusion about the question now before the Court. Will you ask the question.

Mr. White: I was confused myself. I believe I asked—

The Court: Will you ask a question now?

Q. Was there an elected leader of the Young Communist League in Rochester at this time?

A. There was.

Q. Who was that leader?

A. John Noto was the elected leader. He was club president.

Q. You stated you attended meetings of various kinds. [fol. 574] Will you state the nature of some of these meetings?

A. Some of these meetings were ordinary routine business meetings. Others were committee meetings involved with various activities we might have been carrying on at that time, a fair part were educational meetings devoted to talking to Young Communist League members in Marxism and Leninism.

Q. How often would you attend so-called educational meetings?

A. Whenever they were scheduled. We had a series of educational meetings.

Q. Do you have a recollection of any specific educational meetings you attended?

A. I would recall a number of them, yes.

Mr. White: Mark this.

(Thereupon document marked Government's Exhibit G-64 for identification.)

Q. I show you Government's Exhibit G-64 for identification, and ask if you can identify that?

A. Yes, it is a pamphlet called "Young Communists and the Path to Soviet Power".

Q. Do you recall attending an educational meeting concerning that?

A. Yes, I do.

Q. Is that your copy, by the way?

[fol. 575] A. Yes, it is.

Q. I direct your attention to the writing in the corner of that page, and ask you to state what that is?

A. That writing is dated January 11, 1956, with my initials below it identifying the pamphlet as my personal copy.

OFFERS IN EVIDENCE AND OBJECTIONS THERETO

Mr. White: I will offer this in evidence.

Mr. McDonough: I object on the same grounds previously stated.

The Court: Objection overruled.

Mr. McDonough: Exception.

(Thereupon Government's Exhibit G-64, previously marked for identification, received in evidence.)

Q. Can you state whether or not the defendant was present at this educational?

A. Yes, he was present at that educational.

Q. Was this one for a series?

A. My recollection of that particular educational was that it consisted of one or possibly two meetings based on the pamphlet. It is in every large pamphlet.

Q. Where were these sessions held?

A. These sessions were held in a suite of rooms occupied by one of the Party cultural organizations known as the Pen & Hammer Club on Seio Street in Rochester.

[fol. 576] Q. Was there anyone presiding over these classes?

A. Those classes were conducted by Jim West who at that time was Young Communist League organizer in Buffalo. He came in to give this little class on the pamphlet.

Q. What portion of this pamphlet was studied?

A. My recollection is we studied the whole pamphlet.

Mr. White: With your permission I would like to read a couple of excerpts to the jury.

The Court: Is it marked in evidence?

Mr. White: Yes. (Reading from G-64.)

Mr. McDonough: Do you have a copy?

Mr. White: I am sorry, this is the only one I have.

"Report of the Chemadanov to the January Plenum of the Young Communist International." Page 4, second

paragraph. "This speech was given at the January Plenum of the Executive Committee of the Young Communist International, which followed the 13th Plenum of the Communist International. The Comintern Plenum estimated the present situation as one of a new round of revolutions and [fol. 577] wars, and that the struggle for Soviet power is on the order of the day. In that light Comrade Chemadanov's speech is of special importance and every leading Comrade, every league member should study it so as to prepare for the coming decisive class struggles."

Pages 5 and 6: "The Young Communist League is the direct assistant of the Communist Party, and it carries the influence of the Party among the masses of the youth. Hence the tasks which the E.C.C.I. placed before the Communist Parties in general, and especially the task among the youth, are also the tasks of the Young Communist Leagues. The task of the Plenum of the Executive Committee of the Young Communist International consists in revealing the reasons for the isolation of the Young Communist Leagues, using the decisions of the Plenum of the E.C.C.I. has a point of departure and in concretizing [fol. 578] the tasks of the mass work of the Y.C.L. in such a way as to guarantee their solution in the shortest possible time. The Plenum of the Communist International gave a Marxist-Leninist evaluation of the International situation. Our task consists in making this evaluation understandable and clear to the broadest sections of the youth, and in drawing the necessary political and practical conclusions for ourselves. A very important thing that the E.C.C.I. pointed out was that at the present time the world is already coming very close to a new cycle of revolutions and wars and that this obliges us to check up on our ranks and our forces, on the basis of Bolshevik self-criticism, and to place before all the sections of the Y.C.L. the main task of reconstructing their mass work with the least possible delay."

Page 12: "The struggle for the youth. Under the conditions of extreme/intensity of class relations, in the search for a way out of the difficult situation, the class consciousness and the world outlook of the youth take form, and its political activity increases. The capitalist class makes the greatest use of such weapons as the family, re-

ligion, the school, literature, art, the press, radio, the cinema and the entire state apparatus for the ideological enslavement of the youth. It has developed a whole network of various youth organizations. These organizations are extremely varied in their outward form. In the same way, in form, they construct their work to correspond to the desires and needs of the youth themselves. Among these organizations we find religious, semi-military, fascist, sporting, cultural, nationalist, and many other types. These organizations which receive material support from the capitalists and are directed by special political cadres [fol. 580] and instructors, educate the youth in the spirit of slavish submission to capital."

Bottom of page 13: "The growing movement of the youth against hunger and poverty, against fascism and war did not, of course, escape the attention of the capitalist class, which is becoming fascized and is frantically preparing for a new robber war. The bourgeoisie could not fail to notice the growth of the political activity of the youth, the increase of their role in the class struggle and growing Communist influence among them. They have been compelled to re-organize themselves in the struggle for the youth, in the preparation of cadres for war. This was pointed out by the December, 1932 Plenum of the Executive Committee of the Young Communist International last year. Unfortunately, many sections of the Y.C.I. did not understand this and [fol. 581] were unable to draw the necessary practical conclusions for their everyday work. It should be understood that in the present conditions of transition to a new cycle of revolutions and wars the ruling class is unable to keep the youth under its influence by the old bourgeois-democratic methods. It is compelled to pass more and more to terroristic, compulsory government methods of the fascization and militarization of the youth. With brutal hatred, it hurls itself at the Communist Revolutionary organizations of the youth. Germany gives particularly clear examples in this respect."

"The tasks of the sections of the Y.C.I. The Young Communist International, fighting under the leadership of the Leninist Comintern, was and is the only revolutionary youth organization. There is no country in the world where the Y.C.Lers have not struggled nobly and boldly for

[fol. 582] the cause of the working class, for socialism, against capitalism. However small the Youth Communist organizations, they are a tremendous force and danger for the bourgeoisie. It is no accident that the bourgeoisie is now mobilizing all its forces to defeat and destroy the Y.C.I. organizations. The sections of the Y.C.I. that are struggling and developing legally are becoming fewer and fewer. The bourgeoisie is more and more driving them underground. Nevertheless, Communist influence is penetrating deeper and deeper among the masses. The authority of the Communist Party and its nearest assistant, the Y.C.L., among the masses is becoming stronger and stronger. This is explained above all, by the fact that in the Communists and Y.C.Lers the broad masses see the only people worthy of bearing the name of revolutionaries, fighters for their urgent economic interests, against fascism, for the dictatorship of the proletariat."

[fol. 583] Continuing page 20, "The chief task of the Y.C.L., as Comrade Stalin pointed out, is to rally the masses of youth around the Communist Party and to educate them in the spirit of confidence in it, in the spirit of the struggle for the dictatorship of the proletariat, for socialism."

Page 21, "What must be made the chief and fundamental feature of our mass work? What must be put forward in opposition to the chauvanist and nationalist propaganda of the bourgeoisie and the opportunist social-fascist theories?

"The main feature in our mass work must be the propaganda of the Marxist-Leninist revolutionary teachings among the broadest strata of the youth, and the Bolshevik defense of the everyday economic interest of the youth.

"Leninism is our sharpest and invincible weapon in the [fol. 584] struggle against the bourgeoisie and its fascist ideology, in the struggle against chauvanism, nationalism, and social-fascist theories. Have we made good use of this weapon in our mass political work in capitalist countries? No, not yet: The chief reason is that we ourselves have not sufficiently mastered Leninism and learned to apply it to our everyday struggle.

"There is still a big gap between the general agitation

and the concrete struggle for the everyday economic interests. This must be overcome in the shortest time. And this is not the only thing required at present from the Y.C.Lers. It is required that they go into the factories and mills, into the forced labor camps, into the mass bourgeoisie, fascist and reformist controlled organizations, into the universities, the schools, the villages the plantations, wherever the youth are to be found. And there, [fol. 585] working with all insistence and energy, being able to combine illegal and legal forms and methods of work capably, to carry on the propaganda of Leninism and to mobilize the youth for the struggle against unemployment and against the worsening of conditions of labor. From this point of view we must reconstruct our mass work. We must remember that the task is to give the youth a revolutionary, clear and plain outlook. And this can be achieved if revolutionary propaganda is backed up by concrete revolutionary actions, in which the youth itself while actively participating in the class struggle, in strikes, under the leadership of the Communist Party, on the basis of the experience of the working class, will understand that there is no other way out of the crisis except the revolutionary way."

Page 32: "The Plenum of the E.C.C.I. emphasized once again that the concrete task is to form a real mass Y.C.L. [fol. 586] cell which really functions along with every Party factory cell. Does this mean that the organization of the working youth is to be limited only to the formation of Y.C.L. cells? No, it would not be correct to understand the directives of the Comintern in such a way. The directives of the Comintern strike above all at the sectarian methods of work in the factories. Is it normal that in many big factories where several thousand young workers are employed there is a single Y.C.L. cell with seven or eight members in several dozen shops? Is it normal that this cell, hiding inside its own shell, does not try to form a youth section in the Red trade union or an opposition group or some other form of uniting the youth in the reformist, fascist and religious unions.

"We must feel out new forms of uniting and organizing the youth in factories. We must fight for the formation, in [fol. 587] Germany, for example, of class independent trade

unions, and we must carry on mass political work among the youth in the fascist organizations, simultaneously forming our illegal mutual aid clubs, cultural circles, anti-war and anti-fascist activities, etc. Only if mass economic, political and organizational work is very widely carried on can the factory Y.C.L. cell grow, strengthen and gain authority."

"In the present day, work among the unemployed youth is one of the most important sectors of the class struggle. Precisely for this reason in the near future we should propose on behalf of the Plenum of the E.C.Y.C.I. that this question be raised for discussion by all Y.C.L. and Party organizations without exception. We must not limit ourselves only to a formal discussion of the question, as was the case when discussing the directives of the December [fol. 588] Plenum of the E.C.Y.C.I. and work among children. We should appoint special cadres of Y.C.L.ers in discussing the instructions for work among the unemployed youth. We should see that in every Y.C.L. committee, in every cell and group, special comrades are appointed to take political responsibility for the work among the unemployed. We must strengthen the invincible united front of the working and unemployed youth against their common class enemy. At the same time we must turn our faces toward the peasant youth, the young farm laborers, and especially the nationally oppressed youth. This applies to all leagues without exception, including the Polish, and especially the Y.C.L. of such imperialistic countries as U.S.A., France, and Great Britain."

Page 41, "The masses of the toiling youth can and must be won to the side of Communism, through developing the [fol. 589] propaganda of Leninist teachings among them, through mobilizing them for economic and political fights, through leading them to the barricades under the leadership of the Communist Party. We can in wide numbers bring them under our ideological and organizational influence, creating organizations in various forms, as the Y.C.L., etc. Under the conditions of capitalism we can work correctly among the masses of the youth, get into our hands the leadership of various local bourgeois fascist youth mass organizations. And we set ourselves this task. But under conditions of capitalism, without breaking them,

we cannot get into our hands the bourgeois youth mass organizations as organizations. We do not set ourselves such a task. We set ourselves the task of uniting the masses of the youth around the Communist Party in the struggle for Soviet power. We set ourselves the task of overthrowing the rule of the bourgeoisie in a revolution- [fol. 590] ary manner, breaking and destroying its whole apparatus, its whole system, including the mass bourgeois youth organizations so as to form our own proletarian organizations, our Soviet system and apparatus."

Page 43, "Some leagues, the majority of the leagues, are preparing to go underground. Every league, every Y.C.L. organization must now be prepared for this. It would not be correct if this preparation for going underground were limited only to the setting up of illegal technique, rendezvous, addresses, printing plants, etc. Preparations to go underground to meet the blows of reaction means above all, to go to the masses, because work among the masses guarantees that no terror can root out Communist influence. It is precisely in this direction that the illegal leagues must reorganize their work and that the German [fol. 591] League must organize its work. This is precisely what we should demand above all from the Yugo-Slavin comrades, from the Italian and Japanese Leagues."

Page 47, last paragraph, "Our Plenum has gathered under conditions of intense class struggle, when we are closely approaching a new cycle of revolutions and wars. We are solidly united around the Communist International. We are armed with the sharp weapon of Marxist-Leninist revolutionary teachings. We have experienced in the class struggle. Our ranks do not contain any of those who help the bourgeoisie and compromise with them, betraying the cause of the working class. We drive renegades decisively and mercilessly from our ranks. We see our weaknesses and mistakes. Precisely in this our strength lies. There can be no doubt that under the leadership of the Comintern we shall eliminate the isolation of the Y.C.L. and that, [fol. 592] struggling in all countries of the world we shall be able to prove that we are the best and nearest assistant of the Communist Parties, mobilizing the proletarian and toiling masses under the banner of Lenin for the struggle against fascism and war, for Soviet power."

[fol. 593] Q. Is that what you studied in these classes?

A. Yes, it was.

(Thereupon document marked Government's Exhibit G-65 for identification.)

Q. I show you Government's Exhibit G-65, and ask you if you can identify that?

A. Yes, this is the 10th anniversary edition of Joseph Stalin's book "Foundations of Leninism."

Q. Is that your copy?

A. Yes, this is my personal copy. It sold for ten cents at the time. This edition was published in 1934.

Q. Did you attend educational classes concerning that book?

A. Yes, I did.

Q. Can you state whether or not the defendant was present at those classes?

A. He was also present.

Q. I direct your attention to the writing in the corner, and ask you to state what those are?

A. Again those are my initials and the date. This is my personal copy.

Mr. White: The Government offers this in evidence.

The Court: Received.

(Thereupon Government's Exhibit G-65, previously marked for identification, received in evidence.)

[fol. 594] Q. Was this a class or a series of classes?

A. I recall a series of classes held on that booklet.

Q. Where were they held?

A. These classes were held at the home of the then Party representative, Donald Nichols, College Avenue in Rochester in the early part of 1935.

Q. I ask you to examine the contents of this book, and ask you to tell me what portions you studied in these classes?

A. I have particular recollection in the course of studying this book, having studied the Communist position on the national question, also there was some discussion on the dictatorship of the proletariat.

(Thereupon document marked Government's Exhibit G-66 for identification.)

Q. I show you Government's Exhibit G-66 for identification, and ask you to identify that.

A. This is a special edition of Lenin's "State and Revolution."

Q. Did you attend the Young Communist League classes in relation to that book?

A. I did. Those classes were held in the summer of 1935, in the then Party Headquarters in Rochester, in a building that stood at the northwest corner of State and Church Street in Rochester. It has been torn down [fol. 595] since.

Q. Is this your copy?

A. Yes.

Q. Is this the copy of the book you used in these classes?

A. Yes, sir.

Q. What is that writing?

A. My initials and the date identifying that.

Q. Can you state whether or not the defendant John Noto was present?

A. He was also present at those classes.

Mr. White: The Government offers Govern—'s Exhibit G-66 in evidence.

The Court: Received in evidence.

(Thereupon Government's Exhibit G-66, previously marked for identification, received in evidence.)

Q. I show you Government's Exhibit G-66, and direct your attention to the contents, and ask you if you recall what portions you studied in these classes?

A. Out of this particular book, I specially remember studying the first portion of the book on class society, and the state, those portions of that section, such as the state is the product of the irreconcilability of class—

The Court: He just wanted you to designate it. [fol. 596] The Witness: I remember particularly studying about the class society in the state, dictatorship of the proletariat.

Q. Was it customary for members to have their own classes?

A. Yes, it was. They were produced at an inexpensive price, so that we could well afford them even in those days.

Q. I show you what is already in evidence as Government's Exhibit G-11, and ask you if you can identify that?

A. Yes, this is my personal copy of a booklet called "Why Communism", M. Jogan, who was leader of the Communist Party at that time, called "Plain Talks and Vital Problems".

Q. Did you attend classes using that book?

A. Yes.

Q. Was the defendant present at those classes?

A. He was.

Q. I direct your attention to the corner of the cover page, and ask you to state what they are?

A. Those are my initials identifying this particular book.

Q. Can you state what portion of the book you studied?

A. We covered this book pretty well in its entirety.

Q. Can you state where those classes were held?

A. These classes were held in the evening. It is in [fol. 597] Upper Maplewood Park in Rochester, in the summer of 1936.

Mr. White: With your Honor's permission, I would like to read some excerpts from "Why Communism".

Mr. McDonough: It is already in evidence.

Mr. White: He read one brief excerpt.

Mr. McDonough: I was under the impression, even from each excerpt, even if he intended to read, rather than staggering and staggering it, presumably for effect, I object.

The Court: Objection overruled. It is in evidence, any part may be read.

Mr. Henderson: Reading from Government's Exhibit 11, "Why Communism". Commencing on page 27 "No need of revolution.

"The socialists say there is no need of a revolution. They say democracy has prepared for the workers all the means necessary to achieve socialism. Let the workers use universal suffrage, they say, to send socialists into the legislative assemblies. That the socialists form a majority in these assemblies. When this is done, the road is open to pass laws abolishing the capitalist system. Of course, there is the Federal Constitution which prohibits

the confiscation of property by legal procedure, but this, says the leader of American socialists, Mr. Norman Thomas can be overcome. Let us have a constitutional convention to amend the constitution so as to permit Congress to enact socialist legislation. Let Congress then enact a law which orders the big corporations to cede their industrial establishments and all their property to the state. Let us not expropriate them, say the socialists, not by that means. Let us pay them with bonds issued by the Government and redeemable in thirty years. This will mean introducing socialism by pacific methods. No revolutions, no seizure of power, no infringement upon the law. No mass [fol. 599] action, no expropriation of the exploiters. Everything lawful. Everything in a gentlemanly fashion. The electoral law works. The citizens vote. The legislators assemble. They count noses and find a socialist majority. The socialist majority, both in the House of Representatives and in the Senate, passes a law. Capitalism passes out. The Big Trust bow before the will of the people. Gentlemen, you are the lawful heirs of our system, they say politely, and leave the stage for the Norman promises and their associates.

"What a sweet picture. And how deceptive. We are sorry to mar such an idyllic scene. But we Communists are realists, and we do not wish to be carried away by fancies, especially when these fancies are beneficial to the capitalist system as they tend to keep workers from fighting the capitalist state."

Page 32, "The capitalist state is a glaring fact. It is [fol. 600] flesh and blood of the capitalist system. It stands in the way of the workers' program towards a new free life. Can it be abolished by gradual transformation? Those who say it can are the staunchest supporters of the capitalist robbers and the most active promoters of imperialist wars. Their theory is not harmless, indeed. It is a poisonous theory. It is a smoke screen behind which cruel capitalist exploitation is hiding. We Communists say that there is one way to abolish the capitalist state, and that is to smash it by force. To make Communism possible the workers must take hold of the state machinery of capitalism and destroy it."

Page 42, "All national policies are now directed towards the preparation for war. What are these so-called conservation camps if not training grounds for the future army to be used in the war? What is this militarization of the schools and colleges if not preparation for war? [fol. 601] What are these numerous war games on the water and in the air, on the land and in the sea if not preparations for war? What is this mobilization of the industries of the United States, with administrators ready in every section, with a machinery so timed as to make it possible to put the whole country on a war basis within a few hours? What are these repeated declarations by cabinet that the Navy was needed for the purpose of expanding American Commerce? What is this modernization of the Army, modernization of battleships, and the huge increase in the aerial forces of the United States, if not preparation for war?

"Roosevelt's government is a war government. And it is in order to screen these war preparations from the public view for a while that pacifist phrases are used. Roosevelt talking of world peace. Socialist leaders ap- [fol. 602] plauding, trying to make the people believe that Roosevelt is an angel of peace. Reformist union leaders signing in unison with Roosevelt's apostles of peace. A mutual admiration society for laying a smoke screen. Gabriel over the White House. While this hosannah is being sung, the munitions plants are working overtime, poison gas is manufactured in huge quantities, tanks and armored cars are turned out by the thousand, dozen of new formidable battleships are being feverishly constructed to make the Navy second to none, a large part of the public works appropriations is turned to military purposes, seven hundred thousand youths are being drilled in the conservation camps under Army officers, a militarist propaganda under the slogan 'Stand behind the President' is in full swing and reminds one of wartime under Wilson; plants that do not at present work for the war are mobilized to begin such work at a moment's notice; and the entire [fol. 603] war machinery is being perfected by the application of the latest inventions. The administration of the N.R.A. is backed by the war industries and administered

by leading war-mongers. The N.R.A. has the slaughtering industry uppermost in mind. The N.R.A. means war.

"Here as elsewhere we Communists remain political realists. We say to the workers, words are chaff, they mean nothing, they mean less than nothing, deeds count. The deeds of the Roosevelt Government are war deeds.

"We say the workers must fight against war. The workers must realize that war is against their interests. There is only one war that is just, and that is the war of an oppressed class for its liberation or the war of an oppressed nationality for its independence. All other wars are predator wars. Wars of imperialist powers among [fol. 604] themselves are against the Soviet Union, wars for the seizure of territories or the securing of colonies are wars for the profits of exploiters, but they are fought with the bodies of the workers and farmers. The workers and farmers must resist. We cannot stop war altogether. It is not possible to prevent the coming of war as long as capitalism lasts. However, war can be postponed. We can hold a threat over the heads of the ruling class preventing them at least for a while from plunging us into the carnage. The time element counts. Workers' organizations may grow in the meantime. The Soviet Union may increase its power. The working class may become a greater factor internationally, forcing the governments to refrain from immediately carrying out their war plans.

"The fight against the war danger is a political fight. The working class must be aroused. There must be protest [fol. 605] meetings, mass petitions, demonstrations, strikes. The powers that be must be given to understand in an unmistakable way that the workers and farmers are dead set against war. This spirit must be communicated to the Army.

"If this fight has been carried on with sufficient determination, the ground is prepared for action when war comes. The workers do not realize that it is in their power to postpone war. It is. Workers in ammunition plants, go on strike. Shut down your plants. Prevent governmental strike-breakers from resuming work. Railroad men, refuse to handle war materials or to transport troops. Keep guard over your railroad yards and depots lest transportation facilities be used by governmental agents.

Marine workers, do not load either men or ammunition. Truck drivers, refuse to assist in war work. Workers of other industries, help the strikers. Farmers, refuse to give [fol. 606] your food stuffs and raw materials to be used for the slaughter.

"If the workers rise in this way against war, the capitalists with their armed forces will try to break the deadlock. There will be attacks on strikers. The workers will have to offer resistance. We Communists do not close our eyes to the fact that this means civil war. But when the masses are organized and fight in great numbers under revolutionary leadership, the victory is assured. Part of the Army is certain to waver and to join the people. There may be victims, but their number cannot be compared to the losses in life and limb that the workers would suffer in the imperialist war.

"Victory in the civil war spells the doom of the capitalist state.

"We Communists do not say to the workers that they have to begin the civil war today or tomorrow. We say that the civil war is the inevitable outcome of long and [fol. 607] arduous struggles against the capitalists and their state and that these struggles must be made the everyday practice of the working class."

Page 60 and 61. "Can it be Done? It has been done more than once. A revolution broke the backbone of Tsarism in Russia in 1905, but was soon defeated. A revolution abolished Tsarism in March, 1917, when a provisional revolutionary capitalist government was established. In each case the workers played the leading role. A workers' revolution was accomplished in Russia in November, 1917, when the Soviet Government, which is the government of the workers, and peasants was established. The Soviet system has been in existence for nearly 18 years. A workers' revolution took place in Germany in 1918, in Hungary and Bavaria in 1919, in China in 1927. A revolution took place in Spain in 1932. In most of these revolutions [fol. 608] the workers were betrayed, they were either deprived by shrewd capitalist politicians of the fruits of their revolutionary struggle or defeated in armed combat, with socialist leaders aiding the exploiters. In Russia the revolution has survived first of all because the workers

had a strong, well organized Bolshevik (Communist) Party that headed their fight. The defeat of the other revolutions does not argue against the eventuality of revolution. In fact, revolutions are inevitable. They are a natural outcome of the existing system. Our time is a time of workers' revolutions. If not all of the revolutions of the last 15 years succeeded in securing the workers' rule, this was due either to the absence of a strong Communist Party entrenched among the workers, or to the absence of other strong working class organizations, or to the intervention [fol. 609] of foreign imperialists, or to some of these causes combined. And in either case, the reformists were playing the role both of enemies within the working class betraying the revolution and of leaders of the capitalist forces from without the working class against the revolution, all in the name of democracy and freedom.

"Can a revolution be won? Capitalism creates a situation where large masses of the people are dissatisfied, embittered, emboldened by intolerable hardships. Capitalism itself prepares the conditions for its cataclysm. If under conditions for a severe capitalist crisis the majority of the working class is ready to wage a determined armed fight for the overthrow of the capitalist system, then the revolution may be victorious, provided there is in existence a mass Communist Party recognized by the workers as their leader in struggles against capitalism.

[fol. 610] "A standard reformist argument against the revolution is 'The weapons of warfare are so strong in our day that the workers have no chance of winning in open conflict.' The wish is father to the thought of the reformist in this respect. Because they hate a revolution of the workers, they maintain that a revolution cannot win. What is true is that a revolution cannot win unless the armed forces, or at least part of them, join the workers. But once they join, the workers have not only rifles and cannon, but also airships and poison gas and battleships to fight the bosses. Poison gases are destructive to be sure, but their destructive power can be turned also against the old system. There is no reason why the workers should not use them against the enemy when the final conflict has arrived. In all revolutions throughout history the armed forces of the old system were at the beginning

[fol. 611] stronger than the armed forces of the revolutionists."

Page 65. "The Communist Party also participates in the election campaigns as a separate and distinct political party. It nominates its candidates for federal and local offices and it solicits votes. It is anxious to have its representatives in the legislative bodies. But its election campaigns and its activities within parliament are fundamentally different from those of, say, the socialist party. We Communists are not here to help the capitalists govern the masses. We are here to help the masses press their masters, get from the capitalists and their government a maximum of concessions. We do not spread the false notion that there can be co-operation between the exploited and their exploiters. On the contrary, we go to the Legislatures to prove to the workers that such co-operation [fol. 612] must not be, because it is good only for the bosses. In other words, we go to the Legislatures, and we conduct our election campaigns, in the spirit of class struggle. We use the platform of the Legislatures, from which our voice can be heard better than the voice of private citizens to help organize the workers and help them conduct all their daily struggles.

At the same time we try to force the law makers to pass legislation that would bring relief to the workers. We do so, not by pretty speeches, not by telling the law makers, who are servants of the big money bags, how fine and noble they are, but by heading great movements of the masses which would make those gentlemen sit up and take notice. In other words, while the socialists solicit votes in order to reform the state and thereby to make it more effective for the capitalists, we Communists practice revolutionary parliamentarism, by which is meant strengthening the [fol. 613] working class and weakening its enemies. We go to the law making institutions, not to tinker them up for the benefit of the capitalists, but to be a monkey wrench in their machinery, preventing it from working smoothly on behalf of the masters. We use, while there, every step of those agents of the capitalists to expose them before the people, to show what these so-called representatives of the people, and what all the so called democratic institutions actually are."

Page 71: When you observe the Communist Party in action, you cannot fail to compare it with the blood stream of the human body. Like the blood stream it brings life to every section of the body of the working class. Like the blood stream it helps build up every tissue. Like the blood stream it makes the organism live, act, grow.

"There can be working class movements without the [fol. 614] Communist Party; but there can be no real movement for the liberation of the working class without the Communist Party. There can be no ultimate overthrow of the entire capitalist system without the Communist Party.

"Hand in hand with the Communist Party and under its guidance functions the Young Communist League, the revolutionary organization of the young workers. Many other organizations function under the guidance of and in close co-operation with the Communist Party."

Page 72: "The Communist Party of the Soviet Union is affiliated with the Communist International. It is the most influential, but not the only influential party in the International. It is one part but not the whole of the International. Its advice is highly/precious, because it has long accomplished what the Communist parties of the world are [fol. 615] only striving at, the proletarian revolution. The advice and experience of the other parties, however, are also of great value in determining the policies of the Comintern. The seat of the Comintern is Moscow because this is the capital of the only workers' and peasants' government in the world, and the Comintern can meet their freely. As the workers become the rulers of other countries, the Comintern will not have to confine its meetings to Moscow alone.

"The Communist Party of the U.S.A. is thus part of a worldwide organization which gives its guidance and enhances its fighting power. Under the leadership of the Communist Party, the workers of the U.S.A. will proceed from struggle to struggle, from victory to victory, until, rising in a revolution, they will crush the capitalist state, and establish a Soviet state, abolish the cruel and bloody [fol. 616] system of capitalism and proceed to the upbuilding of socialism.

"This is why every worker must join the Communist Party."

The Court: We will recess until tomorrow morning.

(Whereupon an adjournment was taken until April 5th, 1956, at 10 o'clock A.M.)

[fol. 617] PROCEEDINGS OF APRIL 5th, 1956, at 10 o'clock A.M.

APPEARANCES: Same as before noted.

ALLEN DIETCH, resumed the stand and testified further as follows:

Direct examination. (resumed)

Mr. White:

Q. Mr. Dietch, yesterday I believe I neglected to ask you what your occupation was. Will you state it?

A. I am in the printing machinery business. I have operated my own business for about nine years.

Q. At the adjournment of court yesterday, I had read excerpts from Government's Exhibit G-11, "Why Communism". Do you recall that reading?

A. Yes, I do.

Q. Is that what you studied in these classes that you attended?

A. Yes, it is.

Q. I believe you stated yesterday the defendant, John Noto, was the elected Y.C.E. leader in Rochester, is that correct?

A. Yes, it is.

Q. What were his duties as such?

Mr. McDonough: You mean as president?

[fol. 618] Mr. White: Yes.

The Witness: His duties were the same as the president of any other organization, to initiate activities, give guidance to them, delegate responsibility to other members,

to carry on organizational and other activities of the organization.

Q. Did the Young Communist League hold conventions of any kind?

A. Yes, they did. They had district, state and national conventions.

Q. Do you know of anyone from Rochester attended any of the state or national conventions?

A. Yes, we had delegates at state and national conventions.

Q. Can you state whether or not the defendant attended any of these state or national conventions?

A. He was a delegate to state and national conventions.

Q. Do you recall any occasions on which he gave reports concerning—

A. Yes, I do. That is, I remember he was a delegate to these conventions.

Q. Did anyone from the Rochester Branch of the Young Communist League attend any kind of Party school?

{fol. 619} Some of the members attended Party schools held in the Catskill Mountain Region.

Q. Can you state whether or not the defendant—

Mr. McDonough: I object.

The Court: I sustain the objection.

Q. Do you recall any conversation with the defendant having attended any of such schools?

A. Yes, the defendant personally told me he attended such school.

Q. Do you recall—

A. The defendant mentioned sort of dean of that school, Jacob Mindell, known as Bob Mindell, and eventually made a very favorable impression on his students.

Mr. McDonough: I object to that, if the Court Please.

The Court: I sustain the objection.

Q. Did you yourself attend any Young Communist League Conventions?

A. Yes, I did.

Q. Can you state in number how many there were?

A. I attended a number of the district conventions. I was not present at any state or National conventions.

Q. Can you state when and where these took place?

A. I recall a convention in the spring of 1935 in Syracuse, and subsequent other district conventions in Buffalo.

Q. Can you state whether or not the defendant, John [fol. 620] Noto, attended any of these?

A. He was present with me at those conventions.

Q. What occurred at those district conventions?

Mr. McDonough: I object to that unless the witness identifies the conventions.

Q. Do you have any particular recollection of any specific convention?

A. Yes, I recall specifically the Syracuse convention.

Q. Can you state what occurred at that convention?

A. In the spring of 1935, usually reports of the delegates, Buffalo, Rochester, Syracuse, Albany, in fact, we had delegates from the—when we had district conventions in Buffalo, we did not generally get anyone as far as from Albany, but in Syracuse, there were people present from Albany.

Q. As to the one in Syracuse, can you recall what occurred with regard to the conventions of the Y.C.L.?

Mr. McDonough: So I do not have to interrupt, may it appear this is all over my objection, 21 years ago.

The Court: Objection overruled.

Mr. McDonough: I won't have to interrupt.

The Witness: The organizational activity of the Young Communist League was reported on by the delegates of the [fol. 621] various localities, plans of work were discussed, and analysis of the current political situation at the time presented.

Q. Did your branch of the Young Communist League in Rochester have any kind of publication, booklet or magazine?

A. At one time we issued a publication called "The Y.C.L. Pacemaker".

(Thereupon two booklets marked Government's Exhibits G-67, G-68 for identification.)

Q. I show you what has been marked for identification, Government's Exhibits G-67 and G-68, and ask you if you can identify those?

A. These are the September and October, 1938 issues of the Y.C.L. Pacemaker.

Q. Are those your copies?

A. They are.

Mr. White: The Government offers this in evidence.

Mr. McDonough: Over my original objection.

The Court: Objection overruled. Received in evidence.

(Thereupon Government's Exhibits G-67 and G-68, previously marked for identification, received in evidence.)

[fol. 622] Q. I show you Government's Exhibit G-67, and direct your attention to Page 16, I believe it is, page 18, and ask you if you can find an article there concerning the defendant?

A. Yes, his name is mentioned in an article here.

Q. Would you read?

A. "A large crowd was attracted to a street corner meeting held by the League last Friday at North Water and Main Streets. Nat Leroy, the Daily Worker organizer from New York, Johnnie Noto, and Adele Porter spoke on Spain. Many signatures were obtained for the huge post-card destined for the mail box of President Roosevelt. The card requests the lifting of the embargo against Loyalist Spain."

Q. Who was Adele Porter?

A. She was a member of the Young Communist League.

Q. I show you Government's Exhibit G-68 for identification, and direct your attention to page 13, and ask you if there is an article there?

A. Yes.

Q. Read that, please.

A. The article is entitled "Columbus Speaks. Italian YCLers held a successful Columbus Day meeting last Thursday evening at the corner of Niagara Street and Central Park. John Noto, President of Rochester's YCL, [fol. 623] and Frank Mattich spoke. Columbus, in person, and dressed as of yore, gave his impressions of the United States in 1938."

Q. During your YCL membership, did there come occasions when Party functionaries visited YCL meetings?

A. Yes, Party functionaries visited YCL meetings. We

had, as I mentioned yesterday, a Party representative present at most YCL meetings.

Q. Were there people from outside of Rochester?

A. Yes, there were occasionally, we had guests from the state organization of the Young Communist League.

Q. Can you state who some of these persons were?

A. John Little.

Q. Who was John Little at that time?

A. I believe he was the State Organizer of the Young Communist League at that time.

Q. Do you recall any other?

A. We had other visits later by John Gates, Bob Thompson, various state functionaries of the YCL.

Q. Did any National Communist Party leaders ever come to Rochester?

A. They did come to speak at mass meetings at Rochester as they did at other places around the country.

Q. Can you state who they were?

A. On one occasion we had Earl Browder, Elizabeth [fol. 624] Gurley, Flynn, Israil, Ampter, Mother Bloor.

Q. Who was Mother Bloor?

A. She was an elderly woman, at that time, and active in the top leadership of the Party, an old time Communist.

Q. Did there come a time when you left the Young Communist League, then you joined the Communist Party?

A. Yes, around the summer of 1937.

Q. When you joined the Party did you sever connections with the Young Communist League?

A. No, for about a year or so I maintained dual membership in both the Communist Party and Y.C.L.

Q. Was that customary at that time?

A. It was customary among the more active members to join the Party when they became of age, and assuming they were still young enough to retain membership in the Y.C.L.

Q. What was the age to become a member of the Communist Party?

A. As I recall, it was 18 years of age.

Q. When you joined the Party were you assigned to some club?

A. Yes, I was assigned to a clothing workers branch.

Q. Do you recall who headed that club?

A. My recollection is that the head of that club was a Party member by the name of Dave Rosenbloom.

[fol. 625] Q. Did you hold any position in that club?

A. I did, I was Secretary-Treasurer, functioned as educational director.

Q. How long did you remain in this club, workers club?

A. Until late in 1941, when I left the clothing industry.

Q. During this period of your membership in the Communist Party, did you have any contact with the defendant John Noto?

A. I did, during the first part of this period, I had contact at Young Communist League meetings, later after I left my Young Communist League membership lapse I would see him at Party General Membership meetings attended by all of the members of the various branches of the Communist Party in the Rochester area.

Q. Where were these general membership meetings?

A. Those were held in various workers halls around the city, or even in the same halls where the Young Communist League, Ukranian Hall, Lithuanian Hall, Labor Lyceum. I recall one meeting in a small hall on Smith Street in Rochester, known now as St. George's Hall.

Q. Do you recall, speaking of these general Party meetings, do you recall one at which Max Steinberg was present?

A. Yes, Max Steinberg was present at this one meeting in St. George's Hall.

[fol. 626] Q. Can you state the time of this meeting?

A. Late in the 30's, perhaps 1939.

Q. Can you state whether or not the defendant was present at this meeting?

A. He was present.

Q. What is your recollection as to what Max Steinberg spoke about at this meeting?

A. I recall what he spoke about, because contrary to the usual tenure of these meetings, Max Steinberg urged us to be more relaxed in our methods of work. He felt it would be more effective if we were not so excited. Since it was an unusual approach, it stayed in my mind.

Q. You said this was a Communist Party meeting?

A. It was.

Q. Leaving this clothing workers unit, how did you come to leave the clothing workers unit?

A. I left the clothing industry.

Q. Were you assigned to another club in the Party?

A. Yes, I was assigned to the Mid-Town Club.

Q. How long did you remain in this club?

A. I remained in the Mid-Town Club for the remainder of my association with the Party, with the exception of the time when the Communist Party constituted itself for a year or so, Communist Political Association, and [fol. 627] the Mid-Town Club during that time was known as the Community Club of the Communist Party.

Q. During some of this period, did you serve in the Armed Forces?

A. I did.

Q. What branch was that?

A. United States Army.

Q. Do you have a recollection as to some event that took place in relation to the Communist Party in 1945?

A. Well, in late 1945, as I recall, the famous Duclos letter was issued earlier in 1945, the Party reconstituted itself as the Communist Party.

Q. What was the extent of your activity in the Party after the so-called re-construction?

A. In the latter part of 1945, I accepted a position as salesman in the printing equipment industry. In accepting that position I knew it would entail a considerable amount of travel. I knew I would no longer be active in the future as in the past for the reason I would not be able to attend meetings.

Q. In 1946 did you attend Communist Party meetings in that year?

A. In 1946, I attended several of the general membership meetings. I was no longer able to attend branch meetings, because of my absence from the city.

[fol. 628] Q. Did you have any contact with the defend- and John Noto?

A. I would see him at these general membership meetings in 1946.

Q. Do you know what, if any, position John Noto held in the Communist Party in Rochester?

A. I don't recall what his title would have been. I know he was a functionary of the Monroe County Party Organization.

Q. How long did you continue your association with the Communist Party?

A. My association with the Communist Party as a card-carrying member continued as long as they continued to issue cards, which would have been 1948.

Q. How did you come to leave the Communist Party?

Mr. McDonough: I object to that, if the Court please. I don't think that is material to the issues, his personal reasons for leaving the Party.

The Court: I will allow the occasion, but not the details. They may be prejudicial.

Q. Briefly state your reasons.

A. The reasons I left the Communist Party go back to this Duclos letter which helped to shake my faith in the Communist Party. The Duclos letter—

The Court: That I think answers it.

[fol. 629] Q. Subsequent to your leaving the Communist Party, did you have any further contact with the defendant John Noto?

A. I did on a couple of occasions.

Q. Will you state what these occasions were?

A. I saw him again in 1950. I attended his father's funeral. I saw him again in March, 1951.

Q. Where did you see him in March, 1951?

A. He came to my home to see me.

Q. In Rochester?

A. In Rochester.

Q. Will you state to the Court and jury what occurred on this occasion?

A. On that occasion when he came to see me, he told me that because of the political situation where considerable anti-Communist pressure had been created, the Party in anticipation perhaps having to go underground was interested in setting up some sort of printing apparatuses, so that in the event they were deprived of access to conventional sources for commercial printing, they would be able to produce their own.

Q. Were you in the printing business at that time?

A. I was not in the printing business, but I was still in the printing equipment business, so it was logical for him to come to me.

[fol. 630] Q. Did John Noto ask you to do anything?

A. Yes, he asked me if I would be willing to go to Buffalo and meet another Party member, he would be able to give me more details what they had in mind.

Q. Can you state with more particularity?

A. Yes, he set an appointment approximately two weeks from the time of his visit, asked me to go to the Waldorf Restaurant across the street from the Gas & Electric Building here, sit down at a table, read a book and drink coffee and somebody would come up to me who would be known to me as Jack, ask me if I was from Rochester and introduce himself as Jack.

Q. Did you follow those instructions?

A. I did.

Q. What occurred?

A. I did as I was asked to do, and this Jack person, as he was known to me, came to me and introduced himself, asked me if I was from Rochester. We left the restaurant, walked around, and he told me of the type of equipment in which they might be interested.

Q. What was the type of equipment in which they were interested?

A. They were interested in acquiring small light-weight portable, easily dismantled printing equipment.

Q. Did you ever know this fellow Jack by any other name?

[fol. 631] A. No, I did not. I did not know the last name, still don't.

Q. Did you subsequently acquire some equipment for this individual?

A. I subsequently supplied a couple of presses, multi-lyth presses.

(Thereupon two documents marked Government's Exhibits G-69 and G-70 for identification.)

Q. Will you explain to the Court and jury what a multi-lyth machine is?

A. It is a small printing press that uses the photo offset method of printing.

Q. I show you Government's Exhibit G-69 and G-70, and ask you if you can state what those are?

A. These are carbon copies of the originals of our invoices covering the sale of two multi-lyth machines to this Jack.

Mr. Henderson: The Government will offer these in evidence.

The Court: Received.

(Thereupon Government's Exhibits G-69 and G-70, previously marked for identification, received in evidence.)

Q. With reference to Government's Exhibit G-69, I notice it bears date July 9, 1951. What is that date?

[fol. 632] A. That is the date of the sale of the first machine.

Q. Was delivery made on that date?

A. Jack came in at that time to have the machine and picked it up.

Q. What was the price of that machine?

A. \$100.00.

Q. I notice it bears the name Jack Phillips. What is that name?

A. Phillips is just a name we picked out of thin air, meant nothing.

Q. You and Jack?

A. Yes.

Q. Falconer, New York?

A. It was a meaningless address, because he wanted to have a paid invoice on his possession in the event he was carrying his machine and an accident were to occur, there was occasion to prove ownership, so he asked for these invoices, since he was traveling westerly, we picked the name Falconer. There was no connection between the address and the situation.

Q. As to Exhibit G-70, what is the date?

A. August 18, 1951.

Q. What does that date represent?

A. That date represents the sale of the second machine, Model 50.

[fol. 633] Q. What is the price of that machine?

A. That was a better machine, priced at \$200.00.

Q. Does the same name and address appear on there?

A. It does.

Q. Was delivery made of this second machine on August 18, 1951?

A. It was not, Jack was supposed to pick up the machine, we had it ready for him, but he did not show up, and did not show up for six months later, during which time I did not hear from him, and eventually he did come around and pick up the machine.

Q. When was that?

A. Either the last part of 1951, or first part of 1952.

Q. Did he pay cash for these machines?

A. He did, he paid cash in August at the time the invoice is dated.

Q. You mentioned a Duclos article, did you read the Duclos article when it was published?

A. I certainly did.

Q. Where was that published?

A. It was published in the Communist Daily Worker.

Q. Can you state what the substance of that article was?

The Court: That has been read.

Mr. McDonough: I object.

[fol. 634] The Court: I sustain the objection. It has already been read.

Mr. Henderson: You may examine.

Cross-examination.

By Mr. McDonough:

Q. You said, I believe, you joined the Communist Party about 1934 or 1935, Young Communist League?

A. Yes, my recollection is it was sometime in 1933.

Q. That was in the depth of our depression period?

A. It was.

Q. What section of Rochester did you live in at that time?

A. East side of Rochester.

Q. Is that a section where the great percentage of the foreign born population resided?

A. Part of it that I lived in was.

Q. Did John Noto live in the same neighborhood?

A. In the same general neighborhood.

Q. While you were a member of the Young Communist League, did you have occasion to visit his home?

A. I did.

Q. Did he have occasion to visit your home?

A. I believe he did, yes.

Q. Do you remember who the members of his family were?

A. Yes.

Q. How many were there in his family?

A. When you are referring to his family, are you referring to immediate family?

Q. I am referring to both immediate family and number of relatives.

A. There were quite a few of them. I think there must have been a half dozen families living there sometime or other.

Q. Relatives of Noto?

A. Yes, aunts and uncles, grandfather and grandmother.

Q. You had occasion to visit that home numerous occasions?

A. That is correct.

Q. Were you by any chance at an unemployment demonstration in front of the Rochester City Hall sometime in 1933?

A. I was at that demonstration. It happened in 1933.

Q. Do you remember what happened to Noto's grandfather?

A. On one occasion, it may have been this occasion, his grandfather was clubbed by a policeman.

Q. That was about 1933?

A. I believe so.

Q. In an unemployment or relief demonstration by citizens of the city?

A. Yes.

Q. Do you remember John Noto's mother died shortly after that?

A. I don't remember his mother at all.

[fol. 636] Q. You told me you attended Mr. Noto's father's funeral. Do you remember attending his mother's funeral?

A. I don't remember his mother, nor attending her funeral.

Q. You say you and Noto went to high school together?

A. Junior High School.

Q. Are you approximately the same age?

A. We are.

Q. You told us you are about 38?

A. I will be next week.

Q. When you joined the Young Communist League, you joined it for a purpose, did you not?

A. That is right.

Q. When I say a purpose, can we say purposes?

A. You can.

Q. Were you sincere in your purposes?

A. I certainly was.

Q. With respect to some of the things you have told us about, war was on in Spain in 1934 or 1935?

A. Started in 1936.

Q. That was when the Loyalists, so-called, were fighting the rebels, who were the followers of the now Dictator Franco?

A. That is true.

Q. There was great public feeling on both sides in this country at that time?

[fol. 637] A. There was.

Q. There was public discussion as to whether we should support the Loyalists or whether we should support the rebels?

A. True.

Q. It was not only the Young Communist League interested in that discussion?

A. No.

Q. But the Young Communist League supported the Loyalists cause, so-called?

A. They did.

Q. You mentioned your club was known as the John Field Club?

A. Yes.

Q. John Field was a Rochester born Communist?

A. He was. He was a friend of mine.

Q. You know him?

A. I know him well.

Q. Was John Field killed serving with the Spanish Loyalists?

A. He was killed at the Battle of Teruel.

Q. Did the Young Communist League become active in protesting unemployment during that time?

A. Yes; it was active in protesting unemployment.

Q. Was the Young Communist League active in trying [fol. 638] to promote better race relations?

A. It was.

Q. The Young Communist League had numerous and varied objectives?

A. It did.

Q. Were you sincere and devoted to those objectives?

A. Most sincerely.

Q. Were you active in your efforts in that organization to control and further those objectives?

A. Yes, just as active as I could be.

Q. Was the Young Communist League active in the experiment of certain public functions, the American Youth Congress?

A. It was.

Q. Did you ever attend any conventions of the American Youth Congress in the mid 30's?

A. I assume you are referring to the National?

Q. Yes.

A. No, I did not.

Q. The Young Communist League was one of the organizations which promoted the American Youth Congress?

A. It was.

Q. From time to time at your meetings were there reports and discussions of the American Youth Congress?

A. There was.

[fol. 639] Were there many other young youth organizations which took part in that American Youth Congress?

A. There were other youth organizations that participated.

Q. Name some of them.

A. I could not tell you just who was a formal participant. I think various youth religious organizations participated. I don't recall for certain whether the Y.M.C.A. was involved formally or informally, but there may have been some informal participation.

Q. There were other youth organizations entirely dissociated from the Young Communist League?

A. There were other youth organizations involved in that thing.

Q. When that Young Communist League participated in the American Youth Congress, it participated as the Young Communist League?

A. It did.

Q. After that meeting of the American Youth Congress, a gentleman was there as representative of the Young Communist League, was representative of the Young Communist League?

A. That is true.

Q. How about Niagara Frontier Youth Congress, do you remember your organization was active in that?

A. They participated.

[fol. 640] - Q. You attended meetings of the Niagara Frontier Youth Congress?

A. That was late in the 30's, I don't remember.

Q. Do you remember coming to Buffalo with Noto when you took turns riding in the rumble seat in an old car, does that ring a bell?

A. No, it does not.

Q. Do you remember attending any meetings of the Niagara Frontier Youth Congress with Noto or other members?

A. I don't think I did. It happened late in the 30's. At that time my work was in the Party, not in the Young Communist League.

Q. Do you remember Jim West?

A. Yes.

Q. Who was he?

A. Y.C.L. Organizer, earlier in the 30's in Buffalo.

Q. Was he active in the Niagara Falls Youth League?

A. I don't know whether he was in Buffalo in the late 30's.

Q. That was an area organization comparable to the American Youth Congress on an area level?

A. I remember it.

Q. There were other youth organizations disassociated from the Communist Party which participated in that?

A. Yes.

Q. Were the activities of the Niagara Youth Congress [fol. 641] discussed from time to time?

A. They were, we tried to influence the policies of these organizations.

Q. You were represented in the Niagara Frontier Youth Congress as the Young Communist League?

A. We were.

Q. As I understand, you had meetings of the Young Communist League during those years?

A. Yes, many of them.

Q. Did you have social functions?

A. We had social functions, also.

Q. Dances?

A. We did, all the social functions had a political cast to them.

Q. Did you have later on functions?

A. We did.

Q. Social functions were as far as you were concerned, do not seem important?

A. Naturally.

Q. As a matter of fact, without going too deeply into your affairs, you met your wife in the Young Communist League?

A. I did.

Q. With respect to certain affairs, were the tickets printed?

[fol. 642] A. Yes.

Q. Were they held in a public hall?

A. They were.

Q. Were they held under the auspices of the Young Communist League?

A. Some of them were.

Q. You referred to one occasion when you had a meeting in the park?

A. I remember it.

Q. Was that a picnic?

A. No, it was a class on Olgin's book "Why Communism?", gray covered book with red printing.

Q. This Olgin, did you ever meet him, the author of this book?

A. I never met him personally. I knew who he was. He was the editor of the Freiheit, Jewish Daily Paper.

Q. When did he write this book?

A. The date is right there. I think it was 1935.

Q. I see here a first edition December, 1933, do you know whether that was the first American edition?

A. I presume it was.

Q. Do you know what language this book was originally written in?

A. No, I don't. It may have been written in Yiddish. He was editor of a Yiddish daily newspaper.

[fol. 643] Q. It might have been written in Russian?

A. Perhaps, I don't know, but he was an American Communist leader, not a leader of the Russian Party.

Q. I presume before studying Communism, following studying Communism, starting about 1933, you had studied American history?

A. I had.

Q. How old were you when you joined the Young Communist League?

A. Much too young.

Mr. McDonough: I move to strike it out, not responsive.
The Court: Strike it out.

A. 1933, I was 15 years old.

Q. Would you answer my question, how old you were?

A. I was 15 years old.

Q. You understood my question the first time, did you not?

A. I did.

Q. Had you finished high school?

A. No, I was still in high school.

Q. At what meeting was this book by Olgin discussed?

A. It was discussed at a series of classes held in the summer of 1936, in April, Maplewood Park in Rochester.

Q. This is your copy of that book?

A. My personal copy was introduced in evidence. Yes, it [fol. 644] is.

Q. You held onto it all these years?

A. I had.

Q. Did you tell us what year this was?

A. 1936.

Q. Did you purchase this copy, it has got a price marked on here "5 cents"?

A. I presume I purchased it.

Q. I will read two short sentences from about the middle

of page 60. "In fact, revolutions are inevitable. They are a natural outcome of the existing system." Was that a new thought to you then?

A. No, I heard it before.

Q. Where had you heard it?

A. I had it in previous Communist classes.

Q. Who said this "What country can preserve its liberties if these rulers are not warned from time to time that these people preserve the spirit of resistance. Let them take arms. The remedy is to set them right as to facts and pacify them. What significance a few lives lost in a century or two. The door of liberty must be refreshed from time to time with the blood of patriots. It is natural manure." Who said that?

A. I have heard that quotation.

[fol. 645] Q. Who said it?

A. If my recollection serves me right, it may have been said by Abraham Lincoln.

Q. If I told you it was Thomas Jefferson, would you stand corrected?

A. I would.

Q. That statement was made long before you and I were born or anybody in this court room.

A. It was, and made in a different political era.

Q. And under different circumstances?

A. Yes.

Q. Was one of the things you learned as a young Communist and member of the Communist Party that the principles of Marxism and Leninism are not to be applied in all circumstances?

A. That is not my understanding. The basic principles of Marxism-Leninism hold under all circumstances.

Q. Were you taught various writings were not to be applied under all circumstances?

A. We were taught tactics varied, but basic strategy remains the same.

Q. Were you taught that the specific writings by Communist authors were not to be applied under all circumstances?

A. I don't remember any such specific instructions.

[fol. 646] Q. You were not here when Mr. Lautner testified three and a half days?

A. No, I was not.

Q. You don't know what he said?

A. I know what appeared in the newspapers.

Q. You don't know what his testimony was with respect to the last question?

A. No, not directly.

Q. Have you been told about it since?

A. What I read in the newspapers.

Q. Have you gone over any of Lautner's testimony with any Government attorney?

A. I have heard about Lautner's testimony.

Q. From whom?

A. Members of the Department of Justice.

Q. When?

A. Yesterday.

Q. What time?

A. During the time, I would say late in the morning.

Q. Did they tell you why they were telling you what Lautner said?

A. Naturally, they know I am interested in this trial.

Q. Did they deem it necessary you know what Lautner testified?

A. I don't think so, but I wanted to know what Lautner's [fol. 647] testimony was.

Q. Did you feel you would testify better if you knew what Lautner testified to?

A. Not particularly.

Q. You were interested in hearing it?

A. I most certainly was.

Q. Was that just a passing interest?

A. It was a deep interest because I have a deep interest in this trial.

Q. The first time they discussed it with you was during the time, before you came in and testified?

A. Yes.

Q. Getting back to our exhibits. You have identified these exhibits G-67 and G-68 as copies of the local magazine which your Young Communist League got out?

A. That is right.

Q. You referred to an article which described some of the activities in the Young Communist League, in speaking at a street meeting?

A. Right.

Q. I think you told us that was on the question of some petition that was going to be presented to President Roosevelt by the Young Communist League?

A. Right.

Q. Was this maazine sold?

[fol. 648] A. It was.

Q. Where was it printed at that time?

A. I believe it was printed and mimeographed at Party Headquarters.

Q. Where was Party Headquarters?

A. In 1938, they may have been in the Calks Building.

Q. Do you know?

A. I am not certain if they were there at that time.

Q. Did the Party office have its name on the door?

A. It did.

Q. Was that a public building?

A. It was.

Q. These activities, the mass meetings, they were public meetings, weren't they?

A. They were.

Q. How large a crowd did the Communist Party and Young Communist League draw through their mass meetings back there in the 30's?

A. On occasion we filled Convention Hall in Rochester, which held a couple of thousand people.

Q. What was the average attendance during those years at your Young Communist League meetings?

A. I would say the average attendance might have been 15, perhaps 20.

Q. How many of these "Pacemakers" have you saved [fol. 649] over the years?

A. Those two.

Q. Just those two. Haven't you saved any others?

A. No, I had others. I have lost them or destroyed them.

Q. You just happened to have these two in which Noto's name was mentioned?

A. It is.

Q. Did you testify before the Grand Jury in this case?

A. No, I did not.

Q. When did anyone first contact you with reference to being a witness in this case?

A. I think it was early this year, perhaps late last year.

Q. Either late in 1955 or early 1956?

A. Right.

Q. Someone contacted you, if this indictment was returned November, 1954, it was either a year later they contacted you with reference to being a witness?

A. Yes.

Q. Did you go to see somebody first?

A. I did not go to see anybody. Somebody came to see me.

Q. Who came to see you?

A. Two members of the Federal Bureau of Investigation.

Q. Where?

A. In my home.

[fol. 650] Q. Rochester?

A. Yes.

Q. Did you have all the Young Communist League and Communist Party literature at your home during all those years?

A. Yes, I did.

Q. Did you turn over everything you had concerning the Communist Party and its literature to the two men from the Government?

A. No, I did not. Some of this material I had turned over earlier, some I still have.

Q. To whom?

A. Also F.B.I. agent.

Q. The first time the Government contacted you was not late last year?

A. The first time the Government contacted me was sometime, not in reference to this case.

Q. How long ago did the Government contact you?

Mr. Henderson: I object to this. He said it had nothing to do with this case.

The Court: I will receive it.

A. I believe I was first contacted in 1953. I had been contacted once previous to that.

Q. When?

A. In the summer of 1944, when I was in Service, G-2, [fol. 651] Army Intelligence called me in, because they

received an allegation I was a follower of the Communist Party line.

Q. Were you in good health when you went into the Army?

A. I was.

Q. When did you go into the Army?

A. In June, 1944.

Q. How long were you in the Army?

A. Six months, discharged in November, 1944.

Q. What kind of discharge?

A. I received what is known as Section 10, what is known as Convenience of the Government.

Q. Was it medical?

A. I suffered a groin injury. I guess they felt it was a potential liability.

Q. Was it a medical discharge?

A. It was not. It was convenience of the Government.

Q. When you mentioned groin, do you think that had something to do with it?

A. I do, and there may have been some political reasons. I don't know, it was an honorable discharge.

Q. Getting back to the 30's—may I have Exhibit 64—when did you say you got this Exhibit 64 “Young Communists and the Path to Soviet Power”?

A. In the fall of 1934.

[fol. 652] Q. I note it bears a publication, published June, 1934.

A. Correct.

Q. Was Chemadantov an American or Russian author?

A. He was Russian.

Q. This is a translation of the work originally written in Russian?

A. That is true.

Q. Do you know when it was originally written?

A. It was a report to the January Plenum of the Young Communist International.

Q. What year?

A. Yes, it would have been January, 1934.

Q. Sure of that?

A. Yes, I am.

Q. The Communist Party was extremely active in its political affairs in the United States at that time?

A. It was.

Q. Without repeating all these things, this era, in which all these activities we have described, American Youth Congress?

A. Yes.

Q. The Communist Party was running candidates every four years at that time?

A. It was.

Q. Was the Communist Party nominating candidates in [fols. 653-663] Rochester for public office during those years?

A. I believe it did.

Q. Get down to page 43: "Some Leagues, the majority of the Leagues, are preparing to go underground." Do you remember that?

A. Yes.

Q. Did you take that to apply to the Young Communist League in the United States at that time?

A. No, we did not particularly.

Q. It had absolutely no application to the United States, did it?

A. That particular passage did not.

Q. It had no application to the Young Communist League in the United States of America?

A. That particular passage did not.

Q. There was absolutely no reason for the Young Communist League to go underground at that time, was there?

Mr. Henderson: No, there was not, talking about the 30's.

Mr. McDonough: Yes, 1934.

[fol. 664] Q. Getting down to this time in 1950, I think you said it was after you had left the Party when the defendant Noto came to see you at Rochester, you said you attended his father's funeral, but it was in March, 1951, when he visited your home in Rochester?

A. That is correct.

[fol. 665] Q. He knew you were in the printing equipment business?

A. That is right.

Q. I think you said he said in the event the anti-Communist pressure compelled the Party to go underground, as you phrased it, the printing was invalid through conventional sources, the Party would be able to do its own printing, gave that as a reason to purchase printing equipment?

A. That is true.

Q. You knew over the years the Communist Party always had been, what you described as conventional sources getting printing done?

A. That is true.

Q. By "conventional" I assume you mean printing plants doing business legally with plants, offices, stores, and so forth?

A. That is true.

Q. You were talking at that time with him about the fact that the United States Government had been investigating the Communist Party for some time?

A. I was.

Q. In 1951?

A. I was.

Q. You were thoroughly familiar in 1948 the indictment had been returned in New York City charging certain [fol. 666] National leaders of the Communist Party with conspiracy to advocate the violent and forceful overthrow of the Government under the Smith Act?

A. I was.

Q. You understood that the Government's investigation was continuing at that time?

A. That is correct.

Q. You were told the purpose for which the printing equipment was desired, and you were perfectly willing to furnish it, to sell it for that purpose?

A. I was.

Q. You had been out of the Party you said about three years?

A. That is right.

Q. You were engaged in a legitimate printing equipment business then?

A. That is right.

Q. You are at the present time?

A. I still am.

Q. Have been at all times?

A. Have been ever since I entered the industry.

Q. You were thoroughly, both through personal experience in the 30's or 40's and through newspaper readings, with the position the Communist Party found itself in so far as the situation he described with reference [fol. 667] to printing?

A. That is right.

Q. You were perfectly willing to sell him that printing equipment?

A. I was. I still had a little bit of sympathy for the purposes of the Party.

Q. You did not consider you were doing anything illegal at that time?

A. It was not illegal.

Q. When he asked you to come to Buffalo to meet a person by the name of Jack, you agreed to do so?

A. That is right.

Q. Mr. Noto did not discuss details of the equipment required?

A. No, sir.

Q. He told you this gentleman named Jack, whose name is Jack Phillips on the invoices, would be able to give you some information as to the printing equipment desired?

A. That is true.

Q. You came to Buffalo, went to the Waldorf Restaurant and met this gentleman under the circumstances which you described early this morning?

A. That is correct.

Q. As I understand it, John Noto was not present at that [fol. 668] meeting?

A. He was not.

Q. You had no further contact with John Noto after the first visit to your home in Rochester?

A. That is right.

Q. All your dealings were with this gentleman Jack after that, when he told you the type of printing equipment he wanted, you described it to him?

A. I did.

Q. I presume you made your legitimate profit on that equipment?

A. I did, that is one of the reasons I sold it.

Q. I assume so. And the merchandise was picked up by this gentleman Jack on two different occasions, once July 9, 1951, when he paid \$100.00 for the smaller press and once late in 1951 or early 1952 when he picked up the bigger or larger press for which he paid \$200.00 on August 18, 1951?

A. That is right.

Q. The invoices you made out then I assume from their appearance were stapled in your usual ledger of invoices?

A. They were.

Q. They have been removed and turned over to the Government in connection with this case?

[fol. 669] A. Right.

Q. Were those two invoices among the documents which you turned over several years ago or just late in 1955 or early 1956?

A. Those were among the later documents.

Mr. McDonough: I believe that is all.

Redirect examination.

By Mr. Henderson:

Q. Did you appear here voluntarily?

A. I did.

Q. Are you receiving any compensation for appearing here?

A. I am not, it is costing me money to appear here.

Q. Mr. McDonough asked you about your familiarity with the Noto family. Do you know what the political affiliation was at that time?

A. They were all Communistally inclined Party sympathizers.

Q. Mr. McDonough asked you with reference to your sincerity as to the purposes of the Communist League and Communist Party, can you tell us what you did as to the ultimate purposes of the Young Communist League and Communist Party?

Mr. McDonough: I object to that, not proper re-direct.

Mr. Henderson: I believe Mr. McDonough opened up the subject by inquiring the sincerity.

[fol. 670] Mr. McDonough: I assume he had testified at some length on that point.

The Court: I am not impressed by the objection whether it is proper redirect, but what was said by somebody who conducted the classes, this man is not an expert, he has not been qualified as an expert. His testimony is factual as distinguished from some of the testimony of the witness Lautner.

Q. Do you have at this time any present recollection as to any educational classes which you attended at which the aims and purposes of the Party were discussed?

A. They were discussed at this class in the summer of 1935 on "State and Revolutions," summer of 1936 on "Why Communism".

Q. Is that the class you testified the defendant was present?

A. Yes, he was present at those classes.

Q. Who conducted those classes?

A. The class in the summer of 1935 was conducted by Phil Parr.

Q. What was taught in those classes?

A. We were taught the Communist theory on the State Communist position on force and violence. He made [fol. 671] aims of the Communist Party.

Q. What were you taught as to those ultimate aims?

Mr. McDonough: That I object to.

The Court: I sustain the objection. You can tell what was said, not his interpretation of it, but what was said by the person in authority conducting the class.

Q. Do you have any recollection what was said, please state it?

A. Yes, it was stated in that class—

Mr. McDonough: I think we should know what class we are talking about.

The Court: Yes.

Q. I thought we had established this was the class in 1935?

A. That is right, summer of 1935.

Q. Where was it?

A. In the building where Party Headquarters were located, State and Church Street in Rochester.

Q. What was the book?

A. Lenin's book "State and Revolution".

Q. State what was said and by whom?

A. The instructor at that class, Phil Parr, stated since no ruling class in history had ever been known to [fols. 672-679] willingly surrender its state power without a violent conflict, and that the American ruling class would not be any exception, consequently there would be no alternative and it would be historically necessary for us to resort to forceful and violent means to overthrow our own ruling class, and in that manner to win state power or, and to establish the dictatorship of the proletariat, which would eventually with the withering away of the state develop into socialism and ultimately into a Communist classless society, which was the ultimate aim of the Party.

[fol. 680] GERALDINE H. HICKS, called as a witness by and in behalf of the Government, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Donahue:

Q. Will you please tell the Court and jury your name again?

The Court: We have it, Geraldine Hicks.

Q. Are you married?

A. I am a widow.

Q. Mrs. Hicks, where do you live?

A. 1462 Military Road, Kenmore.

Mr. Henderson: The jurors can't hear you. If you talk to the jurors at the end of the box, I think the rest will hear you. Speak louder, please.

The Witness: Thank you.

Mr. McDonough: I am trying to find a position from which I can see and hear. I have to get a little closer.

Mr. Henderson: Sit here.

Q. Would you please repeat your address?

A. 1462 Military Road, Kenmore.

Q. How old are you?

A. 62.

[fol. 681] Q. Where were you born?

A. In Rohrsburg, Pennsylvania.

Q. What is your present occupation?

A. Right now I am during survey work for the Roswell Hospital.

Q. Mrs. Hicks, have you ever been a member of the Communist Party?

A. Yes, I have, in a way.

Q. Will you explain what you mean by "In a way"?

A. I joined the Communist Party to give information to the Government.

Q. When did you join the Communist Party?

A. I think it was around April, 1944.

Q. How long did you remain in the Communist Party?

A. From that time, as far as I know, I am still a member of the Party.

Q. During that time have you furnished information to the Government?

A. Yes, I did.

Q. What branch of the Government?

A. Federal Bureau of Investigation.

Q. In what manner did you furnish this information?

A. Mostly in typewritten reports.

Q. Did you ever furnish information in any other manner?

A. Occasionally if something came up, that I thought was [fol. 682] of importance, I would contact someone and talk to them on the phone.

Q. During the course of your Party membership, did you become acquainted with the defendant John Noto?

A. Yes, I did.

Q. Would you point him out?

A. Over there.

Mr. Donahue: May the record show that the witness identified the defendant.

Q. During that acquaintance with John Noto, what positions, if you know, did he hold in the Communist Party?

Mr. McDonough: I object to this, we don't know when she met him.

The Court: I sustain the objection.

Q. When did you first meet John Noto?

A. It was late 1946.

Q. How long a period were you acquainted with him?

A. I met him the first time in November, 1946.

Q. For how many years after that did you know him or were you associated with him?

A. Well, I would say up until the Communist Party offices closed in 1950.

Q. Any time after that?

A. I met him a couple of times after that, during 1951.

Q. You have known him from approximately 1946 until [fol. 683] some time in 1951?

A. I would say so.

Q. This familiarity with him, where did this familiarity with the defendant take place?

A. That was a general membership meeting in Moler's Hall.

Q. What is that?

A. That was a general membership meeting.

Q. Was it the first time you met Noto?

A. That was the first time I met Noto.

Q. At that time what position did he hold?

A. He was organizational secretary.

Q. Did there come a time he held any other position in the Party?

A. Yes, he became Chairman of the Erie County Communist Party.

Q. Do you know what other positions he held in the Party?

A. Upstate Sub-District Organizer.

Q. During the time you were a member of the Party, did you belong to any club?

A. Yes.

Q. Relate what clubs you belonged to and what offices you held.

A. North Park Communist Party Club.

Q. When did you go into that?

A. I went in that right after I joined in 1944, for a [fol. 684] brief period. This club was broken up and there was a downtown club.

Q. Approximately what period were you a member of the Downtown Club?

A. 1944 until some time early 1945.

Q. What happened in 1945?

A. The Downtown Club was broken up and we went back into the North Park Club.

Q. What was the occasion of the breaking up of the Downtown Club?

A. That was during the time Earl Browder was Chairman, he was expelled, after that the Downtown Club was dissolved, and they took their clubs again.

Q. You mentioned you went back to the North Park Club, approximately how long did you remain in the North Park Club?

A. From 1945 to around 1948.

Q. What, if anything, occurred at that time?

A. In 1948 the Club was again dissolved. They had what they called the captain system.

Q. Did you take part in the captain system?

A. Yes, I was captain of one club.

Q. What were your duties?

A. I collected the dues, a sustaining fund. If there was a fund drive going on, I collected that money and [fol. 685] literature.

Q. Will you explain "Sustaining fund"?

A. That was a fund, aside from the dues, each one was supposed to pay so much a month or as much as they could toward the upkeep of the party for rent and literature.

Q. When did this captain system go into effect?

A. It was around the summer of 1948, I don't know exactly.

Q. You mentioned you collected money from the group of which you were captain, whom did you turn this money in to?

A. From 1948 to 1950, I paid it to Johnnie Ellis.

Q. Who was Johnnie Ellis?

A. She was an active local Party member.

Q. After 1950?

A. I gave it to Shirley Kaplan.

Q. If you know, who was Shirley Kaplan?

A. She was a local Party member.

Q. In addition to your activities in the various clubs, did you participate in any other sort of Party work?

A. I was Secretary-Treasurer of the North Park Club, and I was asked to audit the County Treasurer's books for a while.

Q. Where did this work take place?

A. At 75-1/2 Chippewa Street.

[fol. 686] Q. What is that address?

A. When I joined the Party, that was Headquarters of the Communist Party in Erie County.

Q. Over what period of time was Party Headquarters at 75 1/2 Chippewa Street?

A. From the time I went in, say 1944, it was there until June, 1947.

Q. You mentioned you were asked to audit the books? Would you explain that duty, referring to 75 1/2 West Chippewa Street?

A. I went over the County Treasurer's books, and seen that the entries were properly made and if the addition was in.

Q. Who was the County Treasurer at that time?

A. Getrude Hessler.

Q. Do you know, did John Noto have an office at 75 1/2 Chippewa Street?

A. He shares an office with the other leaders.

Q. You mentioned June, 1947, the Party Headquarters moved?

A. It was around May or June, I would not be sure about the month.

Q. Where did the Headquarters go at that time?

A. 921 Main Street.

Q. Did John Noto have an office at those headquarters?

[fol. 687] A. He also shared an office there with the other leaders, Allie Lutzki, Russel De Pasquale.

Q. Who was Allie Lutzki?

A. He was Chairman at that time, and Russell De Pasquale was Upstate Steel Organizer.

Q. Did you perform any work at 921 Main Street?

A. Yes, I assisted in mailings, if there was any special meeting or mailings to go out, I assisted.

Q. What do you mean by "mailings"?

A. If there would be something special, union leaders or people like that were invited, there was special mailings sent out.

Q. Notices or invitations?

A. Yes.

Q. Did there come a time when your duties increased?

A. Yes.

Q. When was that?

A. 1949 or early 1950, I was asked to take over the County Treasurer's books.

Q. Do you recall who asked you?

A. I was asked by Gertrude Hessler to take them over.

Q. Did you take them over?

A. Yes.

Q. What were your duties in that regard?

A. I collected the fund drive money, and the dues, press [fol. 688] literature, and twice a month there was a sub-district report made out.

Q. From whom did you collect this money?

A. That was collected from the different secretaries of the different clubs. It was no names or records kept, just turned by the club, the amount of money that was received.

Q. You mentioned something in regard to a sub-district report, explain your duties in that regard.

A. The sub-district got a certain percentage of the fund drive money and dues and press and literature, made out in this report, sub-district report.

Q. Where did this money come from, money going to the sub-district?

A. It came from the different clubs that would turn in the money.

Q. Local clubs?

A. Yes.

Q. Do you recall to whom you submitted this sub-district report?

A. Reports went to John Noto.

Q. What position did Noto hold at that time?

A. He was sub-district organizer.

Q. What, if anything, accompanied these reports?

A. The amount of money that was coming to the sub-[fol. 689]district was given to John in a check.

Q. Do you recall on what account these checks were drawn?

A. Yes, Al Lutzki's and Russel De Pasquale's name.

Q. Are those the two men you mentioned previously as local Party leaders?

A. Yes.

Q. How often would you work at Party Headquarters?

A. That is hard to say. Sometimes I would be there a couple of days a week, and then I would not be there for two or three weeks.

Q. How did you know when to report to work?

A. I was usually called by someone.

Q. Do you recall anyone in particular calling you?

A. Yes, I have been called by John Noto, Betty Roseff.

Q. Directing your attention to the office, 921 Main Street, do you recall whether there was any writing of any kind on the windows or doors of the office?

A. No, not at 921.

Q. During the time you worked at Party Headquarters at 921 Main Street, do you recall whether there was any literature on any kind on the table?

A. Yes, there was always a couple of shelves of literature.

Q. Was this literature available to be purchased?

A. Yes.

[fol. 690] Q. Do you recall any newspapers on the table?

A. There was the Daily and Sunday Worker, Political Affairs, Lasting Peace.

Q. "For a Lasting Peace"?

A. "For a Lasting Peace".

Q. I will show you some pamphlets and books introduced in evidence, I want you to tell me whether to your knowledge these were on display and being sold at Party Headquarters, Government's Exhibit G-8, was that sold at Party Headquarters?

A. Yes.

Q. Government's Exhibit G-20?

A. Yes, this was sold at Party Headquarters.

The Court: It will help if you state the numbers and titles.

Q. This is G-27, "Struggle Against Revisionism", was this on display and being sold?

A. Yes.

Q. G-24, "United Front Against Fascism"?

A. Yes.

Q. G-22, "The Dictatorship of the Proletariat", was that on display and being sold at Party Headquarters?

A. Yes.

Q. "Problems of Leninism or Joseph Stalin", G-14, was that on display and being sold at Party Headquarters?

[fol. 691] A. Yes.

Q. Exhibit G-13, "Foundations of Leninism or Joseph Stalin", was that on display and being sold at Party Headquarters?

A. Yes, it was.

Q. G-18, "What is to be Done", G-16, "Left Wing Communism an Infantile Disorder and Imperialism" and "Highest Stage of Capitalism", were they on display?

A. Yes.

Q. Do you recall who would sell this literature whenever any was in demand?

A. There was times when they had a literature director there, if they was not around, anyone could sell and take the money for it.

Q. Anyone who had an office would probably sell?

A. Yes, if anyone was around.

Mr. McDonough: Pardon me, I don't think the witness can give an opinion who had an office there.

The Court: If there is any doubt the Reporter can read it.

Mr. McDonough: I wish he would.

(Answer read.)

Q. Do you recall the first occasion when you met John Noto?

[fol. 692] A. Yes.

Q. When was that?

A. That was Moeller's Hall in late 1946.

Q. Where is Moeller's Hall?

A. I don't know the number. It is on Pearl Street.

Q. Who was present at this meeting?

A. John Noto was present.

Q. What happened at this meeting?

The Court: It was a mass meeting.

The Witness: General membership meeting.

Q. What happened?

A. John was introduced as organizational secretary of the Erie County Communist Party.

Q. Do you recall whether any speeches were made?

A. John talked a few minutes on registration and recruiting.

Q. At this time, can you recall the substance of his remarks?

A. They wanted to recruit as many as they could in the Party, and build a stronger Communist Party, they wanted to recruit among the veterans and industrial workers and the youth groups.

The Court: He was trying to organize.

Mr. Donahue: We were attempting to bring out a few of his duties.

[fol. 693] Q. Do you recall whether there were any other speakers at this meeting?

A. Yes, Lloyd Kinsey.

Q. Who was he at that time?

A. He was Chairman of the Erie County Communist Party.

Mr. Henderson: Speak a little louder, I don't hear your answers.

Q. What was the subject of Kinsey's talk?

A. He talked on the Red baiting going on in the Buffalo Evening News at that time, the Party was trying to overthrow the Government by force and violence.

Q. What did he say?

A. He said they would destroy capitalism.

Q. Directing your attention to the year 1947, did you attend any Communist meetings in 1947?

A. Yes, I attended several.

Q. Do you recall attending any meetings at a place called the Marigold or Cotton Club?

A. Yes, that was Lenin Memorial meeting.

Q. When did this meeting take place?

A. I don't know exactly. I think it was the early part of January, 1947.

Q. Who was present at this meeting?

A. John Noto was present, William Z. Foster, Joe Green and Johnny Ellis were on the platform.

[fol. 694] Q. What do you mean?

A. They were speakers.

Q. Who spoke?

A. William Z. Foster spoke, and he talked on the trade unions and labor movement, and John Noto talked on the life of Lenin.

Q. Directing your attention to 1947, do you recall any leadership changes that took place in that year?

A. Yes, early 1947, John Noto was made Chairman of the Erie County Communist Party.

Q. Where did this take place?

A. 75½ Chippewa Street.

Q. Was this a meeting?

A. Yes, membership meeting.

Q. Do you recall what happened, if anything else?

A. John talked on recruiting, and that they wanted a membership of a hundred thousand people, but if the Communist Party could be the vanguard of the working people, why, they would still meet all the struggles that came up and that would be one step towards socialism.

Q. This was, I believe you mentioned, sometime the early part of 1947?

A. I would say around February, I am not sure about that.

Q. Do you know a person by the name of Ben Schulman?

[fol. 695] A. Yes.

Q. Who was he?

A. He was a member of the North Park Club.

Q. Have you ever attended any meetings with Ben Schulman?

A. Many of them.

Q. In the year 1947 do you recall any particular meetings you attended at which Ben Schulman was present?

A. There was one, a special meeting was called to try to make club meetings more interesting.

Q. Where was this?

A. At the home of Francis Clune, on Stradford Road.

Q. Approximately when did this meeting occur?

A. It was around February, 1947.

Q. What happened?

A. There was only four people came to the club meeting, when they were about to adjourn, Ben Schulman came in and wanted them to have public meetings—

Q. Who was present?

A. There was Francis Clune, Bill Rake, and myself.

Q. What happened?

A. When the meeting was about ready to adjourn, then Schulman came in and he suggested they hold public meetings and distribute literature in their neighborhoods, but John did not approve of this.

Q. John, who do you mean?

[fol. 696] A. John Noto did not approve. He said Communists did not work in that way, and perhaps sometime they could not come out in the open, and they wanted people that they knew that they could trust.

Q. Again in the year 1947, do you recall attending any special defense fund meetings?

A. Yes, there was a meeting to raise money to fight the secretary and treasurer Swallenbach trying to outlaw the Communist Party.

Q. When was this meeting?

A. That was in March, I think, in 1947, but I don't know exactly.

The Court: We will recess until 2 o'clock P.M.

(Whereupon a recess was taken until 2 o'clock P.M.)

[fol. 697] AFTER RECESS, 2 o'clock P.M.

APPEARANCES: Same as before noted.

GERALDINE H. HICKS, resumed the stand and testified further as follows:

Direct examination. (resumed)

By Mr. Donahue:

Q. Prior to recess we were talking about, you mentioned you had attended a defense fund meeting at 75½ West Chippewa Street. Approximately when did this meeting occur?

A. That was in the early part of 1947.

Q. Was the defendant present at that meeting?

A. Yes.

Q. As best as you recall, what happened?

A. This was a defense fund to raise money for the Secretary of Labor, Swallenbach, who was trying to outlaw the Communist Party. John Noto was a speaker.

Q. What was the substance of his remark?

A. He compared Chiang Kai-Shek, De Gal, with the American reactionarists, who tried to dominate the world, he said the only way to fight fascism or to fight this was to build a strong Communist Party.

Q. Do you recall whether he mentioned any reasons?

[fol. 698] A. Any reasons?

Q. For building a strong Communist Party?

A. They would fight for socialism.

Q. Who would?

A. The communist Party would fight for socialism.

Q. This is the substance of John Noto's speech on that occasion?

A. Yes.

Q. I show you Government's Exhibit G-13 "Foundation of Leninism" by Joseph Stalin in the year 1947. In the year 1947, do you recall attending any sort of meetings or classes at which that book was used?

A. Yes, it was classes. There was two days of classes held and this book was used.

Q. Where were those classes held?

A. 921 Main Street.

Q. That was Party Headquarters?

A. That was.

Q. Do you recall approximately when these classes were held?

A. August of 1948—1947.

Q. 1947?

A. 1947.

Q. Who taught these classes?

A. Martha Lewis from New York City.

[fol. 699]: Q. How many people were present?

A. I would say 10 or 12.

Q. Was the defendant present?

A. Yes.

Q. You mentioned these classes were held on two days?

A. Yes.

Q. Directing your attention to the first day, do you recall what was taught on that day?

A. The first day was on the trade unions, relations of the trade unions with the Communist Party, and that they was the proudest organization of the working class, and that the working class should be educated to know the importance of abolishing capitalism and establishing socialism, and the best school for this would be the Communist Party.

Q. As you recall, that is the substance of that first class?

A. That is the best I recall.

Q. Directing your attention to the second, approximately how many people were present at that time?

A. I would say the same amount.

Q. Was the defendant present?

A. Yes.

Q. What was taught at that class?

A. The second time was the Communist Party as vanguard of the working class. She said in order to be a [fol. 700] real vanguard we should have a knowledge of revolutionary theory, and without this you would not be able to lead the working class, the Communist Party must follow and not lead.

Q. Communist Party must follow and not lead?

A. They must be the leaders and not follow.

Q. Directing your attention to the year 1948, did you attend any meetings during that year?

A. Yes, I did.

(Thereupon document marked Government's Exhibit G-71 for identification.)

Q. I show you what has been marked for identification Government's Exhibit G-71, and ask you if you recognize that pamphlet?

A. Yes, this was a book to be used in educational classes.

Q. Do you recall attending any meeting at which this book was used or discussed?

A. Yes.

Q. Where was that?

A. 921 Main Street.

Q. Was it present at that meeting?

A. Yes.

Q. Would you tell the Court and jury what happened at that meeting?

[fol. 701] Mr. McDonough: Does the date of this meeting appear?

Q. Approximately when was this?

A. That was late January, I think, 1948. I won't be sure about the month.

Q. What happened?

A. John Noto announced there would be educational classes held later on, and a teacher would be summoned from New York, there was no name announced, and the theory and practice of the Communist Party would be used in the educational classes.

OFFERS IN EVIDENCE

Mr. Donohue: I offer this in evidence. Any objection?

Mr. McDonough: I understand all this literature is under my original objection. I have not repeated it.

The Court. Objection overruled.

(Thereupon Government's Exhibit G-71, previously marked for identification, received in evidence.)

Mr. Donahue: With your permission—

The Court: What is the title of it?

Mr. Donahue: "Theory and Practice of the Communist Party, First Course." With your permission I would like to read several short excerpts. Page 10, the

[fol. 702] third paragraph from the bottom, "The working class is the most revolutionary class. It leads all other exploited section of the people, farmers, negro people, etc. Created by capitalism, the working class is the grave-digger of capitalism. Its historical mission is to abolish capitalism and establish socialism."

Page 11, bottom of the page, "Ideological struggle against revisionism. The working class cannot improve its position under capitalism without rejecting revisionism, i.e., every opportunist attempt to change or water down Marxism-Leninism. Browderism, a variety of revisionism, preached class harmony and renounced the class struggle. Browderism developed a Utopian postwar perspective of the nonopolies offering voluntary wage increases. Instead of mobilizing the workers for struggle, it subordinated the working class to the interests of monopoly capitalism. [fol. 703] Revisionism devitalizes the workers destroys their militancy, and renders them helpless before the attacks of the class enemy. The ideas of the class enemy must be eliminated from the ranks of the Party and of the working class."

Page 25, second paragraph from the bottom, "Communist do not wage the struggle against fascism and for democracy in order to perpetuate bourgeois rule but to create better conditions for the fight to establish socialism. The struggle for democracy is an indispensable part of the struggle for socialism", and we have a quote from V. I. Lenin, "It would be a fundamental mistake to suppose that the struggle for democracy can divert the proletariat from the socialist revolution, or obscure or overshadow it, etc. On the contrary, just as socialism cannot be victorious unless it introduces complete democracy, so [fol. 704] the proletariat will be unable to prepare for victory over the bourgeoisie unless it wages a many-sided, constant and revolutionary struggle for democracy."

Page 43, at the bottom of the page, No. 5, "Complete emancipation from exploitation cannot be accomplished by trade union struggles alone. Trade union struggles do not, in themselves, educate the working class to understand the necessity for, and the knowledge of how to achieve the abolition of the capitalist system and the establishment of socialism. For that, workers must have

Marxist theory, embodied in a Marxist Party of Socialism, the Communist Party."

(Thereupon document marked Government's Exhibit G-72 for identification.)

Q. I show you what has been marked as Government's Exhibit G-72 for identification, and ask you, do you recognize that?

A. Yes, I do.

Q. Did you ever receive a copy of that?

A. Yes.

[fol. 705] Q. Is this your copy?

A. This my copy.

Q. What is this name?

A. That is the name I used to sign my reports.

Q. Do you recall where you received this?

A. At a general membership meeting held on William Street, 479 William, I think was the number.

Q. Approximately when did this meeting occur?

A. In the early part of 1948.

Q. Do you recall who was present at this meeting?

A. It was a general membership meeting, John Noto was there, there was other members.

Q. There were many other members?

A. Yes, general meeting.

Q. Were there any speakers?

A. John Noto spoke.

Q. Tell the Court and Jury briefly the substance of his remark?

A. He talked about recruiting and building the press and literature and said the Communist Party wanted to start—organize a strong American Marxist Party, and that they could be the vanguard of the working people.

Q. Do you recall whether the defendant referred to this flier you have been shown?

A. Yes, he spoke on each item.

[fol. 706] Q. He covered each item on this?

A. Yes.

Mr. Donahue: I offer this in evidence.

The Court: Received.

(Thereupon Government's Exhibit G-72, previously marked for identification, received in evidence.)

(Thereupon book marked Government's Exhibit G-73 for identification.)

Mr. Donahue: With your permission, I would like to read a short portion of this flier, at the bottom of this flier, a small part, it says: "Recruiting, 135 new members by July 31st. No. 1-Concentration. A-Steel, 40, Electrical, 30, Brass, 6 R.R. 3, set up new clubs in steel, brass and R.R." Do you recall whether the defendant at this meeting mentioned what "R.R." was?

The Witness: It would be the railroad.

Mr. Donahue: Another portion it says "Ideological campaign" under No. 4 it mentions "Literature: A—increase sale of mass pamphlets, every club a literature director, [fol. 707] concentration on special pamphlets." It says under B, "Increase sale of basic literature, Manifesto, 200 History C.P.S.U., 75, ten classics, 100."

Q. I show you this under No. 4, entitled "Literature". Do you recall whether the defendant spoke on that at that meeting?

A. We were asked to purchase the history of the Communist Party of the Soviet Union and the ten classics and the Manifesto.

Q. You mentioned you were asked, you mean the defendant urged?

A. Yes.

Q. I show you Government's Exhibit G-73, "10 classics of Marxism", is that the book that he mentioned?

A. Yes.

Q. Subsequently did you obtain a copy of that at Headquarters?

A. I did, at 921 Main Street.

Q. I show you Government's Exhibit G-8, and ask you if that is a book that was recommended?

A. Yes, "Communist Manifesto".

Q. Did you receive a copy of that?

A. Yes.

[fol. 708] Q. I show you Government's Exhibit G-20, "History of the Communist Party (Bolshevik)".

A. Yes, this I purchased.

Mr. Donahue: What has been marked for identification as Government's Exhibit G-73 is now offered.

Mr. McDonough: Most of these are in evidence already. I think there are two or three that are not.

Mr. Donahue: May I read the table of contents of this. (Thereupon Government's Exhibit G-73, previously marked for identification, received in evidence.)

Mr. Donahue: This book is the "Ten Classics of Marxism." In the table of contents are several books already introduced into evidence and read including "Communist Manifesto", Government's Exhibit G-8, "Imperialism" G-17, "State and Revolution" Government's Exhibit G-15, "Foundation of Leninism" Exhibit G-13, "Left Wing Communism, an Infantile Disorder," G-16, also contained [fol. 709] in this book are teachings of Karl Marx, Socialism, Utopian and Scientific, Dialectical and Historical Materialism, Value, Price and Profit, Wage, Labor and Capital," by "Karl Marx."

Q: With regard to Exhibit G-72, what is the title of this?

A. "Draft" Building Plan for Erie County."

Q. These volumes I have shown you were part of the books recommended as part of that building plan, is that correct?

A. Yes.

Q. Again directing your attention to the year 1948, do you recall attending any enlarged County Committee meetings during that year?

A. Yes.

Q. Is there anyone in particular that you recall?

A. There was one around May, I believe, after this membership meeting.

Q. Where was this meeting held?

A. 921 Main Street.

Q. Was the defendant present at this meeting?

A. Yes.

Q. Tell the Court and jury briefly what happened.

A. He spoke on capitalism and fascism, he said the best [fol. 710] way to be victorious over fascism was to have a strong revolutionary Party to lead the working class and the Communist Party must decide the correct policy to take, and they should be a revolutionary group that should take action at the proper time.

Q. This meeting took place in May?

A. Early May.

Mr. Donahue: May I read a short excerpt from Exhibit G-24, Page 21, "Speeches delivered at the Seventh World Congress of the Communist International July 25, August 20, 1935, by George Dimitroff."

"Can the victory of fascism be prevented, and how? and we reply to these millions of workers: Yes, comrades, the road in the way of fascism can be blocked. It is quite possible. It depends on ourself, on the workers, the peasants and all the toilers.

"Whether the victory of fascism can be prevented depends in the first place on the militant activity displayed by the working class itself, on whether its forces are welded [fol. 711] into a single militant army combating the offensive of capitalism and fascism. Having established its fighting unity, the proletariat would paralyze the influence of fascism over the peasantry, the petty bourgeoisie of the towns, the youth and the intelligensia, and would be able to neutralize one section and win over another section.

"Second, it depends on the existence of a strong revolutionary Party, correctly leading the struggle of the toilers against fascism. A Party which systematically calls on the workers to retreat in the face of fascism and permits the fascist bourgeoisie to strengthen its positions will inevitably lead the workers to defeat.

"Third, it depends on whether a correct policy is pursued by the working class toward the peasantry and the petty-bourgeois masses of the towns. These masses must [fol. 712] be taken as they are, and not as we should like to have them. It is only in the process of the struggle that they will overcome their doubts and vacillations. It is only provided we adopt a patient attitude toward their inevitable vacillations, it is only with the political help of the proletariat, that they will be able to rise to a higher level of revolutionary consciousness and activity.

"Fourth, it depends on whether the revolutionary proletariat exercises vigilance and takes action at the proper time. It must not allow fascism to catch it unawares, it must not surrender the initiative to fascism, it must inflict decisive blows on the latter before it can gather its forces,

it must not allow fascism to consolidate its position, it must repel fascism wherever and whenever it manifests itself, it must not allow fascism to gain new positions, all of which the French proletariat is doing so successfully.

[fol. 713] "These are the main conditions for preventing the growth of fascism and its accession to power."

Q. During your participation in Communist activities what nations were referred to as fascist countries?

A. United States—

Mr. McDonough: I object to it.

The Court: I sustain the objection, unless the circumstances are shown.

Q. Have you ever heard the defendant refer to the United States as a fascist nation?

Mr. McDonough: I object to it as leading. I think this witness should be held strictly to what she heard and not be led.

The Court: I sustain the objection.

Q. In the year 1948, do you recall attending any county conventions of the Communist Party?

A. Yes.

Q. Approximately when did these occur?

A. That was in June, 1948.

Q. Where did this convention take place?

A. 921 Main Street.

Q. How long did it last?

A. There was two sessions, the first one was Saturday night and on Sunday.

[fol. 714] Q. Was the defendant present at this convention?

A. Yes.

Q. Directing your attention to the first day of the convention, do you recall what happened?

A. John Noto was the speaker, and he talked of the National Board Draft Resolution and mentioned the Munt Bill, Taft-Hartley Bill, and that the Communist Party could apply their vanguard role, that their struggles could be ended, and it would be one step towards socialism.

Q. As best you recall, what the defendant said on that occasion?

A. What I recall.

Q. Directing your attention to the second day, do you recall anything that happened at that time?

A. There were different speakers at that time. There was the Tom Penn Club of the University of Buffalo.

Q. What happened in regard to the Tom Penn Club?

A. They was present at this meeting, and condemned the Erie County leadership of the Communist Party and condemned Daily and Sunday Workers, said they were not socialist papers.

Q. Was Tom Penn one of the local Party clubs?

A. It was a club formed on the U.B. campus.

Q. By this criticism, what happened?

[fol. 715] A. There was a committee appointed, and they were to decide whether this club was to be expelled.

Q. Do you recall any speakers in particular at this convention?

A. There was one, a man by the name of Hal, I don't know his last name, I believe he was State Labor Organizer.

Q. From the state organization?

A. Yes, he congratulated members on the work they were doing in the club, also on the action they had taken in the expulsion of this club.

Q. Was this club expelled at that time?

A. I don't think at that time, it went before the County Executives before it was expelled.

Q. They merely drew up the Committee?

A. They drew up the Committee.

Mr. McDonough: I move to strike out the last part of the answer about it being expelled.

The Court: Strike it out.

Q. In the year 1948, do you recall attending any meetings when a report of the 1948 convention was given?

A. Yes.

Q. Where was that meeting?

A. That was held at 921 Main Street.

Q. Approximately when?

A. That was in August, 1948.

[fol. 716] Q. Would you tell the Court and jury briefly what happened at this meeting?

A. John Noto was speaker and gave a report on the National convention, and it was on recruiting. He talked on recruiting, they were to be recruited from industrial groups, veterans, negroes. Especially among the youth groups. They wanted to build a strong Marxist Party among the youth of the country. They had a goal set at that time of 30,000, and that the youth from these clubs and the youth organizations would be the ones who would fight for socialism in the future.

Q. Directing your attention to the year 1950, do you recall attending any Communist Party meetings during that year?

A. Yes.

Q. Do you recall attending any meeting at the home of one, Anderson Daley?

A. Yes.

Q. Where was this?

A. He lives on Seneca Street, 200, something like, I don't remember the number.

Q. Approximately when did this take place?

A. That was the early part of 1950.

Q. As best you can recall, who was present at this meeting?

[fol. 717] A. Betty Roseff, Florence and John Noto.

Q. What happened at this meeting?

A. John Noto talked at that meeting, we had had a fund drive before that, this was to finish up our fund drive to get as much money as possible.

Q. Do you recall what the purposes of the fund drive was?

A. I don't know exactly, no.

Q. What else do you remember took place?

A. John Noto spoke briefly on the Korean War, and said Americans should not be in Korea, this was a war among Koreans, and they should be left to fight their own war.

Q. Approximately this same time, do you recall attending any other meetings?

A. There was a meeting, I don't remember the exact month, that was held in Hamilton Hall.

Q. Where is Hamilton Hall?

A. Hamilton Street, Riverside section in Buffalo.

Q. What happened?

A. John Noto spoke there about the same thing, Korean War, and that the American people should have stayed out of Korea and left to fight their own war.

Q. During the time you were a Party member, were you ever requested to fill out any questionnaires of any type?

A. Yes.

[fol. 718] Q. Approximately when did this happen?

A. That was in 1950, probably in June.

Q. Where did this take place?

A. That was in the apartment of Frances and Warren Lumkin.

Q. How did you happen to go to this meeting?

A. I was called on the telephone to come there.

Q. Do you remember who called you?

A. Johnny Ellis.

Q. What happened when you arrived there?

A. When I got there, Johnny Ellis and John Noto was present, and John Noto gave me the questionnaire and asked me to fill it out and said this was done for security reasons, it may come out they could not be out in the open, they had to be underground, and they wanted to know the loyalty of the members.

Q. What kind of questionnaire was it?

A. There was about 40 questions.

Q. Typewritten questions?

A. Yes.

Q. At this time can you recall any of the questions?

A. I may recall a few.

Q. What were some of them?

A. They asked me if I had ever associated with Trotskyites.

Q. Who was Trotskyites?

A. Members of the socialist workers Party.

[fol. 719] Q. Any other questions you can recall?

A. Whether I had been a member of the Y. C. L., what offices I had held in the Party, whether I was ever suspicious of anybody in the Party, or whether I knew of anyone who had turned sour to the Party.

Q. There were more questions, but these are the ones you recall?

A. That is all I remember.

Q. When did you last attend Communist activities?

A. Early 1953.

Q. What happened at that time?

A. I registered, at that time the captain system was in force, and I registered each one in my group for 1953.

Q. Did you continue to have any Party activities after that time?

A. Well, I attended American Labor Parties from that time on.

Q. In the early part of 1953, to the best of your knowledge, what position did John Noto hold then?

A. As far as I know he was still upstate—

Mr. McDonough: I object to that.

The Court: I sustain the objection.

Mr. McDonough: I ask to strike it out.

The Court: Strike it out.

Q. I have shown you a number of books during the time [fol. 720] we have talked, have you ever read any of these books yourself?

A. No.

Q. What compensation, if any, have you ever received from the Government for furnishing information?

A. I was paid for my services.

Q. Were you paid regularly for your services?

A. Yes, so much a month.

Mr. Donahue: You may question.

Cross-examination.

By Mr. McDonough:

Q. Are you Miss or Mrs?

A. Mrs., I am a widow.

Q. How long have you been a widow?

A. Since 1941.

Q. Did you live in Buffalo then?

A. Yes.

Q. How long did you live in Buffalo?

A. Since 1918.

Q. Were you employed prior to joining the Communist Party in 1944?

A. No.

Q. How long had it been since you had been employed?

A. We had our own business, and I worked at that. We had a dairy.

[fol. 721] Q. Where was that?

A. Tonawanda.

Q. What was the name of that?

A. That was called Linwood at that time.

Q. Has your name been Maynard?

A. No.

Q. What name were you known by when you were in the Communist Party?

A. Hayman.

Q. Had your name ever been Hayman?

A. My middle name.

Q. Is that your maiden name?

A. No, that is a family name.

Q. How long have you known Bill Rake?

A. A good many years, way back in Pennsylvania.

Q. Where is Bill Rake now?

A. Kenmore.

Q. What did you say your address is?

A. 1462 Military Road.

Q. Is that a single house or two families?

A. Single house.

Q. At the time you joined the Communist Party you lived there, did you not?

A. Yes.

Q. Did you and Bill Rake join the Communist Party [fol. 722] together?

A. No.

Q. Where did Bill Rake live in 1944?

A. On Military Road.

Q. What number?

A. Same number.

Q. Same address?

A. Yes.

Q. Have you ever been married to Bill Rake?

A. No.

Q. Did the Government solicit you as an undercover agent, or did you go to the Government seeking employment?

A. I got in through a friend, through Bill Rake.

Q. Was Bill Rake an undercover agent?

A. Yes.

Q. You and he lived at this—

Mr. Donahue: I object to this, Mr. McDonough casting aspersions.

Mr. McDonough: I am not casting aspersions, I am asking for facts.

The Court: Objection overruled.

A. I am not the only one that lives in the house.

Q. Who else lives there?

A. There are two other friends.

Q. Also Government undercover people?

[fol. 723] A. No.

Q. Whose home has it been?

A. Bill Rake's home, and the people in the house contribute toward keeping up the home.

Q. How many years have you and Bill Rake lived at that home?

A. We have all lived there some length of time.

Q. How long?

A. Since 1946.

Q. Who are these other people?

A. There is a Mrs. Vandling.

Q. Who is the other person?

A. Miss Yaeger.

Q. You say you have all lived there since 1946?

A. Yes, sir.

Q. Where did you live before 1946?

A. I had my home in Tonawanda.

Q. What address?

A. Fletcher Street.

Q. Where did Bill Rake live?

A. 1462 Military Road.

Q. Before you moved in there?

A. Yes.

Q. That was Bill Rake's home before that?

A. Yes, he has lived there 30 years.

[fol. 724] Q. Bill Rake was already Government undercover agent before you joined?

A. Yes.

Q. You did join in 1944?

A. Yes.

Q. That was during the war?

A. April, 1944.

Q. How did you join?

A. I was asked. There was a meeting at the Lafayette Hotel, Curly Flynn was speaker, I was asked by Sam Goldman to join the Party.

Q. Was he a member of the local Communist Party?

A. He was leader.

Q. You had already gone to the Government and became undercover agent?

A. No, I had attended social functions of the Party, I went with Bill Rake, but I was not a member until 1944.

Q. Bill Rake was undercover agent when you joined the Communist Party?

A. Yes.

Q. Had been for how long?

A. I think 1943.

Q. You and he were keeping company?

A. I would not say that, we were friends.

Q. You had been friends for years?

[fol. 725] A. For many, many years.

Q. You know Bill Rake was a member of the Communist Party when you joined?

A. Yes.

Q. Did you go to your first meeting with him?

A. Yes.

Q. He suggested that you go to that meeting?

A. He suggested that I go to that meeting.

Q. First meeting?

A. If I was already a member I would go, I was entitled to go if I was a member.

Q. Who suggested that you join?

A. I was asked by Bill Rake to join.

Q. It was at Bill Rake's request you join the Communist Party?

A. Yes.

Q. Your purpose in joining was to act as undercover agent?

A. Yes.

Q. How long had you been on the Government payroll at that time?

A. From 1944.

Q. How long before your actually joining the Party?

A. I had not been on the payroll until I started to go to regular meetings.

[fol. 726] Q. You said you got so much every week or month?

A. I started with \$50.00.

Q. How much are you making now?

A. \$50.00.

Q. A week?

A. A month.

Q. Do you get expense money, too?

A. Yes.

Q. When you joined the Party, what were the mechanics, where did you go, who did you see, what did you sign to attain membership?

A. I paid 10 cents to join.

Q. That was in 1944?

A. Yes.

Q. Where did you pay it?

A. Lafayette Hotel.

Q. To whom?

A. Sam Goldman.

Q. Was that at a general meeting?

A. Meeting that Curly Flynn was speaker.

Q. Was it an open meeting?

A. Yes.

Q. You walked in the door?

A. Yes.

Q. Was it in the ballroom?

[fol. 727] A. I don't remember the number of the room.

Q. Was it a big room?

A. Yes.

Q. One of the big hotel rooms?

A. It was a good sized room.

Q. How many others were there?

A. It has been a long time ago; there was a good crowd.

Q. Can you estimate?

A. Possibly 50.

Q. Did you take notes while you were there?

A. No, absolutely not.

Q. You are relying on your unaided memory as far as that meeting?

A. Yes.

Q. When was the next meeting?

A. I could not tell that, I don't know. I attended many, many meetings.

Q. When did you start to take notes?

A. I never took notes.

Q. Am I to understand you are relying on your unaided memory in giving us what went on at these various meetings?

A. There is some things that stand out in your mind more than others.

Q. I am asking whether you are relying on your [fol. 728] unaided memory in telling us what went on at these affairs?

A. That is right, I have not taken any notes.

Q. Did you make out reports after any of these meetings?

A. Yes.

Q. To whom did you send them?

A. The Government.

Q. Did you keep any copies of them?

A. No.

Q. Have you seen them recently?

A. No.

Q. How long has it been since you have seen one of the reports you sent to the Government?

A. I have not seen them.

Q. You have never seen any of the reports you sent in since the day you sent it in?

A. That is correct.

Q. So that you had nothing just prior to this trial with which to refreshen your recollection as to what went on at these meetings?

A. No.

Q. You told us you did not know when the second meeting was in 1944?

A. I don't remember.

Q. Was the second meeting private or a public meeting?
[fol. 729] A. I don't remember.

Q. Where was it held?

A. I would not know. I attended a good many meetings.

Q. You have told us that several times, but I would like to stay with the second meeting. Who was there at the second meeting?

A. I would not know.

Mr. Donohue: The witness already said she cannot recall.

The Court: Objection overruled. This is cross-examination.

Q. When was the third meeting?

A. I haven't any idea.

Q. Do you know where it was held?

A. No.

Q. Do you know when it was held?

A. No.

Q. Do you know who was there?

A. No.

Q. Do you know who spoke?

A. No, I don't know.

Q. Did you continue to go to meetings during 1944 and 1945?

A. Yes.

Q. Can you tell us where any of them were held after the first meeting?

[fol. 730] A. Probably it was held at 75½ Chippewa Street.

Q. Did you say probably?

A. That was the headquarters at that time.

Q. Do you have any recollection as to whether or not these meetings in 1944 or 1945 were held at 75½ Chippewa Street?

A. Yes, there were meetings held during that time.

Q. At 75½ Chippewa Street?

A. Yes, that was the office.

Q. How many?

A. I don't know.

Q. Who was there?

A. I would not know.

Q. I take it your memory starts from the day you met John Noto?

A. That is when I met him, in 1946.

Q. That is when your memory starts?

A. I don't know, I would not say that exactly.

Q. 75½ West Chippewa Street was the Buffalo Headquarters of the Communist Party, Erie County Headquarters until 1947?

A. That is right.

Q. You said at that time until 1947 Al Lutzki was the Chairman of the Party?

A. Yes.

[fol. 731] Q. The Communist Party had a telephone in there, did it not?

Mr. Donahue: I object, I don't believe the record will show the witness said that.

The Court: He is just asking if they had a telephone.

The Witness: Al Lutzki was not the Chairman at that time.

Q. Didn't you tell us in 1947 Al Lutzki was Chairman when they moved to Main Street?

A. Yes.

Q. 1947?

A. Yes.

Q. The Party's Headquarters moved from 75-1/2 West Chippewa to 921 Main?

A. Yes.

Q. Didn't you tell us on direct examination that Al Lutzki was County Chairman at the time the Party moved to Main Street?

Mr. Donahue: I don't believe that was her testimony.

The Court: He is asking her if it was.

Mr. McDonough: Not purposely, I assure counsel, if you are intimating that I am. I would like to have a moment [fol. 732] if there is going to be a point made of this, until I find it in my notes.

Q. Who was Chairman in 1946?

A. Sam Goldman.

Q. I am talking about Erie County Chairman?

A. Yes.

Q. You say Sam Goldman?

A. Yes.

Q. Didn't you say Lloyd Kinsey was Erie County Chairman on the occasion of the meeting in 1946?

A. He was Organizational Secretary.

Q. He was not County Chairman?

A. No.

Q. Do you remember telling us in June, 1947 Headquarters were moved to 921 Main Street?

A. Yes.

Q. Do you remember telling us Noto shared office with Al. Lutzki and De Pasquale?

A. Yes.

Q. Didn't you tell us Lutzki was Chairman at that time when the Party moved from Chippewa Street to Main Street?

A. Yes.

Q. That is the truth, then, isn't it, Al. Lutzki was Chairman at that time?

A. Yes.

[fols. 733-750] Q. Thank you. Was Kinsey Chairman in 1946?

A. Yes.

Q. It was after 1947, or some time in 1947 that Mr. Noto became County Chairman, isn't that true?

A. He became County Chairman early 1947.

Q. That was after the Party had moved from Chippewa Street to Main Street?

A. No, John—they moved to 921 Main Street in June, 1947. John Noto was Chairman before that.

.

[fol. 751] JOSEPH A. CHATLEY, called as a witness by and in behalf of the Government, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Henderson:

Q. I hope you will speak up. What is your occupation?

A. I am a bus driver.

Q. What organization?

A. Niagara Frontier Transit System.

Q. Prior to the reorganization of the Bus Company, did you also work for the I.R.C.?

A. International Railway Company.

Q. How long did you work for the Bus Company?

A. This is my 14th year.

Q. Are you connected with a union?

[fol. 752] A. Yes.

Q. At the Bus Company?

A. Yes.

Q. How long have you been a member of the union?

A. I am a charter member.

Q. How long is that?

A. Since 1945.

Q. What is that union?

A. International Association of Amalgamated Street Electric Railway & Motor Coach Employees.

Q. Did there come a time when you became a member of the Communist Party of the State of New York?

A. Yes.

Q. Will you describe the circumstances under which you became a member of the Communist Party?

The Court: When was it?

The Witness: This was in the fall of 1949.

Q. I assume you made a contact with some members of the Communist Party which brought about your membership?

A. Yes.

Q. State what contact you had with the Communist members prior to your own joining?

A. I had known several Communist members for some time previously, and they had been——

Q. Who were those people?

[fol. 753] A. Michael Clune, his wife Frances Clune.

Q. C-l-u-n-e?

A. Yes.

Q. Had you been friendly with these people?

A. Yes.

Q. How did the subject matter with respect to the Communist Party arise between you?

A. Originally, early in 1945, it came to my attention that International officers of the Transport Workers Union

were all apparently members of the Communist Party, and on asking the Clunes they said "Yes", it was actually nothing wrong about that, because the Communists were the best people in the country.

Q. What was Clune's position in the party?

A. He was special organizer of the Local C.I.O. office.

Q. Transport industry?

A. In all C.I.O. Unions.

Q. Did there come a time you determined that Clune and his wife were members of the Communist Party?

A. They told me so.

Q. Had you been making reports from time to time to the Federal Bureau of Investigation concerning your observation of the Communist Party in this area?

A. Yes.

Q. When did you first begin to report to the F.B.I. on [fol. 754] the affairs of the Communist Party?

A. That was some time before I became a member of the Party.

Q. What was the nature of the report?

A. I made telephone reports to them. At first I did not identify myself. Later on I did identify myself.

Q. Did there come a time when the Clunes whom you have described as Party members asked you to join the Party?

A. Yes, almost monthly from around about 1946.

Q. Did there come a time when you had a contact personally with agents of the F.B.I. respecting your observations of Communist activities?

A. Yes.

Q. State, if you will, what that contact was, and what action you took.

A. They requested me to become a member of the Communist Party in their behalf.

Q. Did you agree to do it?

A. Yes.

Q. Did you become a Communist Party member?

A. Yes, within the period of about six weeks.

Q. What day or month did you actually become part of a dues-paying member?

A. It was, I believe, the latter part of September, [fol. 755] 1949.

Q. Did you get a card when you joined?

A. No, I was told that they had discontinued issuing membership cards.

Mr. McDonough: I object to this unless it is co-versation with this defendant.

The Court: I sustain the objection.

Mr. McDonough: I move to strike it out.

The Court: Strike it out.

Q. Did there come a time when you met the defendant, John Noto?

A. Yes.

Q. Do you know John Noto?

A. Yes.

Q. Do you see him in this court room?

A. Yes. (Indicating).

Q. What was the occasion of your meeting John Noto, and if there was a conversation at that meeting state what was said by you and Noto?

A. The meeting was at the home of Michael and Frances Clune. It was in the fall of 1949. I had been requested to come there by Mrs. Clune. When I arrived there I was introduced to two people who I did not know, one was introduced as John Noto.

Q. That is the man you pointed out?

[fol. 756] A. Yes, sub-district chairman of the Communist Party, for the Western half of New York State, that is the way he was introduced to me.

Q. Who else was there?

A. Al. Lutsky.

Q. What was his capacity?

A. Erie County Chairman.

Q. Was there any conversation at the time of this first meeting, and, if so, what was it?

A. He asked me a great many questions concerning my background in labor work, various unions I had been with, types of work I had done. Later asked me what knowledge I had of Marxism and Leninism and Soviet Russia.

Q. What did you say?

A. I gave him my background in the labor movement, and told him I knew very little about Marxism or Leninism or Soviet Russia.

Q. Was there any further conversation about what possible use you may have?

A. Yes, he said because of my work, the Unions I worked with, I would be extremely valuable to the Communist Party, and he felt I would be most valuable if it were not generally known that I was a member of the Communist Party.

[fol. 757] Q. To keep your connection undisclosed?

A. Yes, he said to work it sort of underground.

Q. Did he enlarge to you on why he thought as an experienced labor man you would be useful to the Party?

A. Yes, he said the work they were doing among labor unions required people who had a large acquaintance and a lot of friends and who knew a great many Union officers.

Q. He expected to make your acquaintance used by the Party?

A. Yes.

Q. Do you have a recollection of a further meeting with the defendant Noto perhaps in November, 1949?

A. Yes.

Q. State where that was, and what was said.

A. At the home of Michael and Frances Clune.

Q. These are the people that brought you into the Party?

A. Yes.

Q. Who was there?

A. Frances Clune, John Noto and Al. Lutsky.

Q. At that time was there any discussion with respect to the Local American Labor Party candidate?

A. Yes.

Q. What was said about that?

A. It had been their instructions everyone must support [fol. 758] to the utmost all the American Labor Party candidates.

Q. Did they ask you to work in any manner concerning that effort?

A. Yes, I must attend all the meetings and actively solicit labor union people to support these candidates.

Q. Was there anything else discussed at this meeting

in November, 1949, particularly with respect to the arrest of certain Communist leaders?

A. Noto was very pleased, he said that the New York Communist Leader had secured bail pending the appeal. He said these were the type of people in the organization, they were the finest people in the United States, and they were willing to make any sacrifice, go to jail or lay down their lives to carry on the work. He said it was a fine thing to be able to continue that work while on bail.

Q. During the discussion between you and Noto did he say anything concerning the numbers of people constituting the people in this area?

A. Yes, he said it was no insignificant thing. He said there were 1200 well educated, well trained people, and many thousands of people that worked every day in co-operation with them that were not Party members.

Q. Any other discussion on this November meeting you [fol. 759] had with Noto and Lutsky?

A. Yes, he gave me instructions as to some things he did not want me to do. He wanted me to never try to contact him by telephone. He said if I needed to get in touch with him in a hurry I should get it through Mrs. June and by using their instructions I wanted to talk to a mutual friend. If he called me at home I should never use his name. I should recognize his voice, but I should not use his name. He said his telephones were all tapped by the F.B.I.

Q. Did you ever receive any Communist literature from the defendant Noto during your acquaintance with him?

A. Yes, he gave me literature on the second meeting and every meeting thereafter—

Mr. Henderson: Mark that.

(Thereupon pamphlet marked Government's Exhibit G-74 for identification.)

Q. I show you Government's Exhibit G-74 for identification, and ask you if you can identify that?

A. Yes.

Q. What is it?

A. It is a magazine called "Political Affairs".

Q. What can you say with respect to the defendant Noto in that copy?

[fol. 760] A. Either this copy or one similar, that is, of the same date, was given to me at the second meeting. He said I should read it thoroughly, make sure that I understood it. He said this would give me the only true slant on what happened in this country and particularly political. He said I could not believe the press, because the capitalist press printed nothing but lies.

Mr. Henderson: I offer that in evidence.

The Court: Received.

(Thereupon Government's Exhibit G-74, previously marked for identification, was received in evidence.)

Q. I show you Government's Exhibit G-54, and ask you if you can identify that?

A. Yes.

Q. This is called—

A. "Lasting Peace for People's Democracy".

Q. Who gave you that?

A. John Noto.

Q. On this occasion, November, 1949?

A. Yes.

Q. Did he make any comments on that document?

A. Yes, he said this was about the best thing I would get on this subject.

Q. What subject?

[fol. 761] Subject of peace and similar lines. This is a gentleman they call John Mau.

Q. Indicating the cover page, with the picture of this Chinese man. I offer that in evidence.

(Thereupon Government's Exhibit G-54, previously marked for identification, received in evidence.)

Mr. Henderson: I would like to read all of this to the jury. This is one of several exhibits that came in through the Witness Lautner, "For a Lasting Peace for a People's Democracy." Underneath the title is "Bucharest, Organ of the Information Bureau of the Communist and Workers' Parties." This is the issue of Friday, October 7, 1949. I read from the left-hand margin under the title "Great Victory of People's Democratic Revolution in China." This is all in evidence. "The Chinese people are living through stirring days. The people's liberation army, win-

ning one victory after another, has freed the greater part of the people of China from the reactionary Chiang Kai-[fol. 762] Shek regime." There is some description between, and it goes on to say "And the greater the scope of the people's liberation struggle in China became, the more pronounced became the intervention of Britain and the United States who sent Chiang Kai-shek more and more arms, money, instructors and advisers. The greater part of the equipment captured by the people's liberation army from the Kuomintang troops is marked 'Made in America'. American imperialism invested billions of dollars in Chiang Kai-Shek's counter revolutionary undertaking. These billions were squeezed out of the American people. In their 'white book' designed to explain U.S. policy in China, the trans-Atlantic pretenders to world domination themselves admit that America's assistance to Chiang Kai-Shek amounts to more than half of the Kuo-[fol. 763] mintang Government's total expenditure.

"Against this background the victory of the Chinese revolution acquires a special significance, for it still further weakens the imperialist front, aggravates the general crisis of the capitalist system, brings nearer the inevitable end of bourgeois domination outlined by the whole history of the development of human society, brings nearer the ultimate victory of the working people of the world and the triumph of Communism.

"The great significance of the victory of the Chinese revolution and the guarantee of its invincibility lies in the fact that it is headed by the most progressive class in contemporary society, the working class, educated and guided by the Communist Party of China."

At the last of this article:

"World Reaction and, in the first place, American imperialism will, of course, continue to resort to the foulest means in its struggle against the National Liberation Movement of the freedom loving peoples, such means as open military intervention and infiltration of the revolutionary movement by spies and provocateurs like the traitors, Tito and Rankovic. But as Mao Tse Tung said when he opened the People's Political Consultative Conference of China 'the State System of the

people's democratic dictatorship is a powerful weapon to defend the gains of the people's revolution and to struggle against the conspiracies of foreign and internal enemies plotted with the object of restoring the old order.

"History has already passed sentence on imperialism. In our age all roads lead to Communism."

[fol. 765] Q. Did you from time to time get any other material from Noto in your contracts with him?

A. Yes.

Q. What was the nature of this literature that you received?

A. I got "Political Affairs" monthly. I got copies of the "Daily Worker", and various leaflets that were put out, peace promotions, and things against the A-bomb and H-bomb, some of these things were presented to me, others I was expected to pay for.

(Thereupon booklet marked Government's Exhibit G-75 for identification.)

Q. Look at Government's Exhibit G-75, for identification, and tell me if you can identify it?

A. Yes, this is a book given to me by John Noto.

Q. Can you recall the occasion approximately?

A. It was in September, 1950.

Q. That is entitled "History of the Russian Revolution," edited by Stalin, Molotov, Voroshilov, Gorky, Zhdanov, Kirvo. I offer that in evidence.

(Thereupon Government's Exhibit G-75, previously marked for identification, was received in evidence.)

(Thereupon booklet marked Government's Exhibit G-76 for identification.)

Q. I show you Government's Exhibit G-76 for identification [fol. 766] tion. What is that?

A. This is a volume from the "Little Lenin Library", Proletarian Revolution and Renegade Kautsky.

Q. Is this the copy John Noto gave you?

A. Yes, this is the identical copy. It bears the initials and the date 2/10/51, which is the date I gave it to the F.B.I.

Q. Did he make any comment at the time he gave you

these two exhibits, "History of the Russian Revolution" and the "Proletarian Revolution"?

A. On the day he gave me the "History of the Russian Revolution" he said it was the best book had ever come into his hands. He said he knew I would have many questions. He said if I would re-read the book, most of my questions would be answered. He said if there were any points I did not understand he would be happy to clear them up at a later visit.

Q. Referring to this Exhibit G-75 by Stalin, Molotov and others?

A. That is right.

Mr. Henderson: I offer Government's Exhibit G-76 in evidence.

(Thereupon Government's Exhibit G-76, previously marked for identification, was received in evidence.)

[fol. 767] Mr. Henderson: I might comment to the Court, this Exhibit G-76 is a copy of Government's Exhibit G-19, but is entered here to show it was given by the defendant to the witness. I would like to read a small paragraph from this rather lengthy "History of the Russian Revolution," Exhibit G-75. This is a foot-note "J. Stalin, the October Revolution and the Tactics of the Russian Communists, Leninism."

Page 356, "The Last Attempt of the Bolsheviks to secure the peaceful transfer of the whole power to the Soviets by peaceful means proved unsuccessful. But this attempt once more showed that power could be secured only by an insurrection against the bourgeois government and the petty bourgeois block. The slogan 'All Power to the Soviets' once again came to the fore. But it had now acquired a different meaning, because the Soviet themselves were [fol. 768] different.

"The slogan 'All Power to the Soviets' was again put forward. But now this slogan no longer signified what it did in the first stage. Its content had been radically changed. Now this slogan meant a complete rupture with imperialism and the passing of power to the Bolsheviks, for the majority of the Soviets were already Bolshevik. Now this slogan meant that the revolution must march directly towards the dictatorship of the proletariat by

means of insurrection. More than that, "this slogan now signified the organization and fashioning of the dictatorship of the proletariat as a State."

[fol. 769] Mr. Henderson: I have some reading in this article I would like to do a little later.

Q. Bringing your attention to your contacts with the defendant Noto, do you have a recollection of having meeting with the defendant Noto in March, 1950?

Mr. McDonough: I object to this as leading, if the Court please. I don't think this witness should be told when the meeting was, he should tell us.

The Court: I sustain the objection.

Q. Do you have a recollection of a meeting occurring following this meeting when you were given the books?

A. Yes, they were meetings practically weekly, sometimes he would not show up for a couple of weeks, there were times he came to my home a couple of times a week.

Q. Do you recall any meeting early in 1950, and if so, where?

A. Around the latter part of March or early part of April he came to my home one evening with Frances Clune.

Q. What was said by you and by the defendant Noto?

A. He wanted to impress on me that the next valuable thing I could do would be to contact minor labor officials, such as Union Stewards, and bring them to the business [fol. 770] meetings which were being established at that time.

Q. What business meetings were current at the particular time?

A. At that time an organization was being founded known by one name, called the East Side Business Group.

Q. Was there any other than the so-called East Side Business Group?

A. Yes, there was a group Noto called the U. B. or University of Buffalo Group.

Q. What was said by Noto particularly with respect to your participation in these business groups?

A. I should get these people interested and bring them to the meetings.

Q. Talking about the stewards?

A. Yes.

Q. Was there any further comment by Noto with respect to the business groups?

A. Yes, he said these people, if I brought them to the meeting, they would be met by other party members, and it might be possible to develop these people for other party promotions, at least they could be kept on in the business groups, if they could not be kept there, they could be filled with distrust with the powers that be.

Q. Did he express any reason why you, as a member of [fol. 771] the Party should show an interest in business groups?

A. Yes, at that time peace was the top in the Party promotion, he explained to me why.

Q. What did he say?

A. He said the Soviet Union had been through a terrible war, a great portion of their country had been laid waste, and they had been weakened considerably. He said until such time they had a chance to recover from this damage and strengthen themselves, they would be easy prey for anyone, if anyone attempted to invade them, it would be difficult for them to resist, so it would be necessary to push peace until such time they had recovered.

Q. Did you ever have a discussion with the defendant during the period of your acquaintance with him as a member of the Party concerning any weapons of war?

A. Yes.

Q. When was this and what was said?

A. Early in 1950, he wanted to impress me with the importance—

Mr. McDonough: I object to that and move to strike it out.

The Court: I sustain the objection. Tell us what was said.

Q. Tell what you said to him and he said to you and [fol. 772] state when this was and where it occurred.

A. At my home, it was early in 1950, he told me that it would be necessary to push everything in the line of stopping the manufacture of A-bombs.

Q. A-bombs or H-bombs?

A. H-bombs had been proposed. It was not a fact yet. Pieces in the paper said the Government was attempting to——

The Court: Just a moment. Only the conversation that took place, nothing else.

Q. Go ahead.

A. On the matter of Atom Bomb, he said, the Soviet Union did not have the Atom Bomb and would be at a very great disadvantage until such time they did have it, until such time we must put out leaflets and petitions and put out everything against the manufacture of the A-bombs.

Q. Do you have a recollection of a meeting some time in the fall of 1950 at your home with Noto?

A. Yes.

Q. Will you state what Noto said to you and what you said to him on that occasion?

A. In September, 1950, he called at my home and he asked if I had read in the local papers anything about the construction of concentration camps by the Federal [fol. 773] Government. I told him I had not. He said that the newspapers did not call them concentration camps, they called them security camps, but he said concentration camps are what they are. He said they are not building them for ornamental purposes. He said "They are going to fill them with our people, starting with the leaders." I asked him at the time if he thought any local people might be picked up, placed in such camps. He said that he expected when they were ready he would be one of the first people to go. He said the Federal Government would continue with these camps and fill them with a lot of people, but the time would come when there would be a show-down, working people will stand just so much. It might take several years, it will result in bad times, but in the end it will result in a turn in the country to Marxism and Leninism. He said then his part might be in it, he was willing to suffer anything to bring it to that glorious end.

Q. Do you recall any time in 1950 in which you had a visit with Noto, and, if so, where was it and what was said?

A. Some time later after this meeting I just reported, he returned to my home, two or three weeks, he was rather upset about what he called the McCaron Act.

[fol. 774], Q. What did he say?

A. He said it was designed to put the Communist Party out of business. He said regardless what they say about it, that is the purpose. He told me it would require the registration of every party member with the Federal Government, and he said that orders had come through party members would not register, they would ignore. He told me he wanted me to remember one thing, nowhere in this world had the Communist Party been put out of business by legislation or by the jailing of its leaders. He said "Such things only strengthen the Party."

Q. Do you have a recollection of any other meeting with the defendant Noto in the early spring of 1951?

A. Yes.

Q. Where did this take place, what did you say and what did he say?

A. I was taken to his home by Michael Clune at Noto's request.

Q. Where did he live?

A. Purdy Street, Buffalo.

Q. Who took you there?

A. Michael Clune.

Q. When you arrived there who was present?

A. Noto's wife, his sister and Lumpkin.

[fol. 775] Q. Do you know whether or not Noto's wife was a Communist Party member?

A. Yes, she was.

Q. What was said between you and Noto on this occasion at his home, and where did this conversation take place?

A. When we entered his home, he told me he wanted to have a private conversation with me, and he escorted me out of the rear door into the yard in the rear of his home. When we arrived in the yard, we went to a position near the rear fence. He told me a job had been given to him and he required my assistance. He told me that I had been engaged in some important work up to that time, but he said "This will probably be the most important thing you will ever do." He said "One of our top people" was on the lam.

Q. On the lam?

A. From the law. He said the Government is trying to frame this man and throw him in jail. He said it was over what the newspapers called this Atom Spy Ring business. He said it was necessary to get this man out of the country in order to get him out of the clutches of the law. He wanted to know if I could take this man into my home, shelter him from the public gaze, provide him [fol. 776] with bed and board for a period of three or four days. He said he would be brought into Buffalo at night, and after three or four days here he would be picked up and continue his trip westward. I agreed that I would do it. He told me he expected complete information on the procedure within a day or two and he would contact me and let me know.

Q. How did he state he was going to contact you, any comment on that?

A. No.

Q. When did you next see Noto?

A. Some three weeks or more after that I got a telephone call at my home.

Q. From whom?

A. From Noto.

Q. What did he say?

A. He said he wanted me to meet him at the Waldorf Cafeteria, Court and Franklin Streets, at a certain time that afternoon. I agreed I would be there and meet him.

Q. Did you meet him?

A. Yes, when I arrived there he wasn't there, but he arrived within a few minutes.

Q. Is this the place just outside this building?

A. Just across the street.

[fol. 777] Q. What was said by you and Noto on that occasion?

A. He informed me he had the full procedure I should operate under for this man that was going to be brought into Buffalo. He said it would require my being home every night, beginning with that night, 10 minutes to midnight right until daylight. He said some time around midnight or shortly after someone would come to my door and ring the bell. When I answered the door there would be someone there who would say he was Joe and Sam had

sent him. I would admit him and take him to the telephone. He would make a call and leave and within a short time after having left the party I was to hide away was to be brought to me. He would be turned over to me and some time later, 3 or 4 days, the same procedure would be used to get him away from there.

Q. Did you stay home as directed?

A. Yes.

Q. What was your next contact with the defendant Noto?

A. I met with him on and off, I would say every week or ten days during the next couple of months. I do remember a meeting that occurred around Labor Day. He came to my home to tell me that the authorities were picking up Party people all over the United States. He said, "They are [fol. 778] trying to put us out of business by taking the leaders, but", he said, "I need not worry because the Party would never be without leaders." I asked him if he expected to be picked up. He said almost daily. I wanted to know what he was going to do. He said he was in contact with superiors and asked for instructions, but as of that date had not received them. He raised some possibilities. He said that he would probably be instructed to remain and submit to arrest. If so he would probably be bailed out shortly. When bailed out he would either be instructed to remain and submit to a trial or disappear and forfeit his bail. He said he might find it necessary for him to get out of the country. Whatever his instructions were, those were the things he would do. He said he wasn't afraid of anything and was willing to endure any hardship in order that the work go on. He was even willing to lay down his life.

Q. This was around Labor Day, 1951?

A. Yes.

Q. What developed with respect to this person who Noto said was on the lam, mixed up with the Atom Spy Ring?

A. He told me he had no word, that it had been called off. He said if it had been called off he would be [fol. 779] notified immediately so it would still be necessary for me to be home from 10 minutes to midnight on.

Q. How long did you keep that up?

A. Until the latter part of October.

Q. This was Labor Day, 1951. Did you see John Noto again subsequent to Labor Day of 1951?

A. Yes, I saw him twice more during the months, I believe around the 15 or 17 of September.

Q. Give us your best approximation of the day you next saw Noto after Labor Day?

A. He came to my home on the 15th of September but did not remain long.

Q. Any conversation that day?

A. It was mostly concerning a contribution I was to make for bail bond for people arrested who were Party members.

Q. Did you make a contribution?

A. Yes.

Q. How much?

A. \$10.00.

Q. Gave it to the defendant Noto?

A. Yes.

Q. Anything more in the way of conversation that day, September 15, 1951?

A. No, he was there a few minutes, one of the shortest [fol. 780] visits. He seemed to be nervous and upset.

Q. Did there come a time in Buffalo you had contact with him and what was said?

A. Two days after this meeting I have reported he came back. It had to do with an A.L.P. meeting.

Q. American Labor Party?

A. Yes. There had been a committee meeting in the headquarters on Main Street.

Q. Of the A.L.P.?

A. Of the A.L.P. More to have something to say. I had questioned the endorsement of one candidate. This endorsement had been offered to Leland N. Jones and he had refused it. In fact he said if the A.L.P. endorsed him, he would disavow it. It then had been offered to another candidate. In any event I raised the question that this man would be of no value to the A.L.P. should he get elected.

Q. You said that?

A. Yes, he was given the endorsement over what I had to say, and Mr. Noto came to my home to tell me I should not further oppose the designation of this man at the A.L.P. choice, because it had been ordered by the Party

locally. I told him I had not known that, no one had told me. He said someone had slipped up. I assured him I [fol. 781] would no longer oppose it. He left my home. That was the last time I saw John Noto until today.

Q. 17 of September, 1951?

A. Yes.

Q. Did you have any further contacts with the Communist Party after that 17th day of September, 1951, and if so, with whom?

A. Orders were brought to my home from that time by Mrs. Noto.

Q. Orders to do what?

A. To carry out different promotions they were engaged in at the time. She was deeply in the work I was doing with the A.L.P. about business groups.

Q. Were you a member of the American Labor Party at that time?

A. No, but I worked with them closely, attended their meetings, helped to establish their local office. I went to New York City with Mike Clune to assist him getting the upstate job of director of the A.L.P. All the A.L.P. members knew me. I helped out every way, showed motion pictures at their meetings, things of that type.

The Court: We will adjourn until tomorrow morning at 10 o'clock.

(Whereupon an adjournment was taken until April 6th, 1956, at 10 o'clock.)

[fol. 782] PROCEEDINGS OF APRIL 6th, 1956, at 10 o'clock A.M.

APPEARANCES: Same as before noted.

JOSEPH A. CHATLEY, resumed the stand and testified further as follows:

Redirect examination (resumed)

By Mr. Henderson:

Q. We ended yesterday, you had been describing this incident wherein you stated that the defendant John Noto had contacted you in the rear yard of his home, had commissioned you to shelter a party person who was on the lam and asked you to provide several days of shelter?

A. Yes.

Q. Was that man's identity made known to you?

A. No.

Q. I think you testified you were asked to stay at your home from ten minutes to 12 on every night for a contract?

A. Yes.

Q. How long did you stay at your home pursuant to this direction?

A. From the night I was so instructed by Noto until the latter part of October.

[fol. 783] Q. What year?

A. 1951.

Q. When did you last see the defendant John Noto or have any contact with him in 1951?

A. On the 17th of September, he came to my home for not more than 10 or 15 minutes. That was the last time I saw him.

Q. Did you throughout this period when you were commissioned to shelter this man after the contact was made to you through Noto, stay at your home from 10 minutes to 12 on?

A. Yes.

Q. Did there come a time when any individual appeared at your home?

A. No.

Q. That never materialized?

A. No.

Q. Did you ever have any explanation from the defendant as to what happened to this project?

A. No explanation.

Q. You testified from time to time, from the time he

asked you to accomplish this task there was talk about this thing coming off?

Mr. McDonough: I object to that.

The Court: I sustain the objection.

[fol. 784] Q. What was your statement?

A. I said I would ask each time they came to my home if the thing was still on. He would say he had no word to the contrary and it would be necessary for me to stay home. He said he would have been notified of any change in plans.

Q. As I understand it, you became a Party member at the request of the F.B.I., and began to report to the F.B.I. in 1949?

A. Yes.

Q. Did you receive any compensation from the Government during the period of 1949?

A. No.

Q. You were working for the R.F.C. at that time?

A. Yes.

Q. Did there come a time you received compensation?

A. Yes.

Q. Will you state when that was?

A. 1950.

Q. What arrangements were made with respect to compensation for the work you were doing?

A. I was to be reimbursed for any outlay of cash that they authorized—I don't know any arrangement was ever made, any amount of payment.

Q. Have you any recollection of any sum you received [fol. 785] for disbursements and expenses and for your services in 1950?

A. Between \$350 and \$400.

Q. Can you state approximately what you received for reimbursement and compensation in 1951?

A. Between \$450 and \$500.

Q. Did you continue your services during part of 1952?

A. Yes.

Q. Can you state to the best of your ability an approximation as to your reimbursement?

A. Approximately \$150.00.

Q. Can you state the total compensation and reimbursement for all the services to the Government?

A. Between \$1100.00 and \$1200.00.

Q. Did there come a time you no longer worked for the Government?

A. Yes.

Q. State what the circumstances were with regard to this point.

Mr. McDonough: I object to this as incompetent.

The Court: Objection overruled.

The Witness: In March, 1952, I met with a couple of special agents and we discussed my standing at that time. I told them—

[fol. 786] Mr. McDonough: All over my objection, exception, if the Court please.

The Witness: I told them that conditions were bad for me, I had been ousted from Union office—

Mr. McDonough: I object to this, incompetent, prejudicial, only for the purpose—the only purpose is to prejudice this defendant.

The Court: What is the purpose?

Mr. Henderson: There is no involvement in this, this man was working with the I.R.C.

The Court: What is the purpose?

Mr. Henderson: To show the reason his services terminated. He had been working regularly on a job and as an agent of the Government. I thought it would be proper to show he left in a certain manner.

The Court: I don't see what materiality it has to the case. It might prejudice the defendant.

Mr. Henderson: I did not propose to use the name of the defendant.

The Court: I know you did not, but I cannot see the [fol. 787] materiality.

Q. In your work due to your activities had you become recognized as a Communist?

A. Yes.

Q. Did that cause you embarrassment in your work?

A. Yes.

Mr. McDonough: I object to that.

The Court: Objection overruled.

Mr. McDonough: May that stand to the line of ques-

tioning, may this whole line of questioning be under my objection?

The Court: Yes.

Q. Did you bring that to the attention of the F.B.I.?

A. Yes.

Q. Did you state you wanted to stop your work as an agent?

A. Yes.

Q. Did they agree?

A. Yes.

Q. At this time you had no contact with the defendant Noto for several months, is that right?

A. Yes.

Q. We have entered in evidence Exhibit G-76, "The Proletariat Revolution and Renegade Kautsky", you have described that as a book Noto gave you to read at one of [fol. 788] the early contacts with him?

A. Yes.

Q. Did you read it?

A. No.

Q. What did you do with it?

A. I showed it to a special agent of the Bureau, initialed it at his request, dated it and turned it over to him.

Mr. Henderson: If I may read from this exhibit?

Mr. McDonough: What number?

Mr. Henderson: 76.

Mr. McDonough: I renew my objection to reading anything further from this document. This document was introduced early in the trial. The United States Attorney had full opportunity to read any passages he wanted to. I object to particular portions, improper, as prejudicial.

The Court: Anything in evidence may be read. The only thing I said, if you want to read it on your own case, anything that is in evidence can be read.

Mr. McDonough: The point of my objection is, I object [fol. 789] to the staggering of this reading for the purpose of emphasis with the jury.

Mr. Henderson: I did not read from this before. I am reading to show the connection between this book given to this witness by Noto.

At page 5 of this exhibit "This work published at the end of 1918, was written after the appearance of Karl Kautsky's pamphlet, 'The Dictatorship of the Proletariat', in which Kautsky criticises Lenin's State and Revolution and repeatedly reveals himself as an opponent of proletarian revolution; and as an open counter revolutionist."

• Reading at Page 6, "Kautsky covers up the fundamental question of the proletarian class struggle, the dictatorship of the proletariat. He denies the most important thing, namely, the need to carry on the struggle for its realization. Caricaturing Marx's entire revolutionary theory, [fol. 790] Kautsky has Marx' 'See capitalism peacefully growing into socialism.' He entirely denies the only real road to working class power, forcible revolution, and sees the possibility of proletarian victory as the result of winning a parliamentary majority in elections. Lenin's clear exposure of the incorrectness of this revisionist theory on the basis of the modern experiences in the class struggle, and first of all the experiences of the Russian Revolution, had a special significance in view of the developing class struggles in Europe."

• "Lenin shows that every form of class rule has a different form of democracy. Bourgeois dictatorship has a bourgeois form of democracy. Proletarian dictatorship has proletarian democracy. The rule of the proletariat is incompatible with the maintenance of bourgeois democracy, which is superficially universal but in reality pre-[fol. 791] vents participation in the government by the great majority of the population and constitutes a dictatorship in the interests of the possessing classes."

"In 1918, the question became especially immediate, because of the lack of clarity on this subject among the leftward moving masses of the social democratic workers. A clear expression of the theoretical confusion which exercised an influence over these masses is the proposed combination of Soviet rule and bourgeois democracy, which means the preservation of bourgeois democracy, in the program of the so-called Independent Social Democrats who were headed precisely by Kautsky. Lenin shows how proletarian democracy was established through the Soviets, even during the first months of the proletarian revolution in Russia and refutes Kautsky's defense of the

[fol. 792] Russian Mensheviks and socialists revolutionaries, whom Kautsky considers socialists, by pointing out how these parties played the role of enemies of the revolution and were active only in their attempts to destroy the revolution. Only the Bolshevik Party, Lenin shows, fought for socialist revolution, for the dictatorship of the proletariat, which means for proletarian democracy, democracy for the broadest masses of toilers."

Page 19, "Dictatorship is power, based directly upon force and unrestricted by any laws."

Mr. McDonough: What paragraph?

Mr. Henderson: About two thirds.

At page 20 "The Proletarian Revolution is impossible without the forcible destruction of the bourgeois state machine and the substitution for it of a new one which in the words of Engels, 'Was no longer a State in the proper [fol. 793] sense of the word.'"

"But Kautsky found it necessary to gloss this over and to lie, his renegade position demanded it."

At page 22, "In defining the term 'Dictatorship', Kautsky tried his utmost to conceal from the reader the fundamental symptom of this concept, namely, revolutionary violence. But now the truth has emerged, the point under discussion is the anti-thesis between peaceful and violent revolutions.

"That is the whole point. Kautsky had to resort to all these evasions, sophisms and fraudulent falsifications in order to dissociate himself from violent revolution, and to conceal his renunciation of it, his desertion to the side of Liberal Labor Politics, i.e. to the side of the bourgeoisie. That is the whole point."

[fol. 794] I would like to one last thing, page 24, at the bottom.

"To sum up, Kautsky in the most incredible manner has distorted the concept, dictatorship of the proletariat, and has transformed Marx into a common liberal, i.e., he himself has rolled down to the level of a liberal who utters banal phrases about pure democracy, embellishes and glosses over the class content of bourgeois democracy, and above all is mortally afraid of the oppressed class resorting to revolutionary violence. By interpreting the concept revolutionary dictatorship of the proletariat to mean that

the oppressed class will not use revolutionary violence against its oppressors, Kautsky beat the world record in the liberal distortion of Marx, and the renegade Bernstein has been proved to be a mere puppy compared with the renegade Kautsky."

You may ask.

[fol. 795] The Court: How is that spelled?

Mr. Henderson: K-a-u-t-s-k-y.

Cross-examination.

By Mr. McDonough:

Q. Mr. Chatley, when did you say you first met Michael Clune and his wife Frances Clune?

A. In 1939 was the first time I met Michael Clune. In 1944 was the first time I met Mrs. Clune.

Q. How long had you known them before you first contacted the Government?

A. A period of possibly two and a half or three years.

Q. Would that be from 1944 or 1939?

A. From 1945, when I began going to their home.

Q. Your original contacts with Clune were through your Labor Union?

A. Yes.

Q. Was that the same Union represents you now, the N. F. T.?

A. No.

Q. Was it another transportation field union?

A. A company union.

Q. What union?

A. It was called the Mitten Plan.

Q. When did you first go to work for the I. R. C.?

A. 1943.

[fol. 796] Q. Where were you working in 1939?

A. I was self employed.

Q. What line of business?

A. Independent taxi operator.

Q. You had your own cab?

A. Yes.

Q. You first went to work for the I. R. C. in 1943?

A. Yes.

Q. You were not a member of the Union in the 30's?

A. No.

Q. When did you first join the Union, in 1943?

A. Yes.

Q. At whose request?

A. That was a condition of employment.

Q. That was a different union?

A. Yes.

Q. After you met Clune were your relations with him friendly?

A. Yes.

Q. They developed to a point where you would visit his home about 1945?

A. Yes.

Q. Is that when you got in touch with the Government?

A. No.

Q. How long after you visited his home?

[fol. 797] A. Two and a half or three years.

Q. 1947 or 1948?

A. Around there.

Q. In the meantime you got very friendly with Clune?

A. Yes.

Q. You visited their home frequently?

A. At their request.

Q. Was it always at their request?

A. I did not go there unless I was invited.

Q. You became very good friends?

A. Yes.

Q. The time came you had the run of their house?

A. Practically the first time I went there.

Mr. Henderson: I think the "run of the house", I object to the form of the question.

The Court: I will receive it.

Q. You came and went in and out of Clune's home when they were not home?

A. I would not say that.

Q. You got very close to them, isn't that right?

A. Yes.

Q. After you got good and friendly with them you called up the F. B. I. about it, is that it?

A. It was not over the friendliness I called the F. B. I.

Q. You had been talking Communism over these years?
[fol. 798] A. They had been directed the Communist line to me.

Q. They had been trying to interest you in the Communist Party?

A. Yes.

Q. Did they give you any literature?

A. Not at that time.

Q. So that there is no misunderstanding, I am talking about the period 1945 and the period of two or two and a half years later when you first contacted the F.B.I. During that period did you receive Communist literature from Mr. and Mrs. Clune?

A. Yes.

Q. What did you do with it?

A. Usually threw it away.

Q. That was before you contacted the Government?

A. Yes.

Q. Did you read any of it?

A. No.

Q. Did you discuss Communism with them?

A. I listened courteously to what they had to say.

Q. During that time did you absorb and understand anything about the Communist Party?

A. I began to get an understanding as time went on.

Q. Hadn't you read about the Communist Party before you met them?

[fol. 799] A. Not a great deal.

Q. By 1947 you were a very close friend of the Clunes?

A. That is right.

Q. Had you joined the Communist Party up to that point?

A. No.

Q. You got in touch with the F.B.I.?

A. Yes.

Q. Whom did you talk to down there at that time?

A. I don't know.

Q. Didn't you talk to one or more agents at that time?

A. Not identified by name.

Q. Did you identify yourself by name?

A. Not at that time.

Q. You didn't tell them who you were?

A. They asked me, I told them I would rather my name be kept out of it.

Q. Was this a personal contact or telephone?

A. Telephone.

Q. How many times did you contact the F.B.I.?

A. I could not tell you.

Q. Was it more than twice?

A. Yes.

Q. Was it more than five times?

A. Yes, I believe it was.

Q. It was more than a dozen times?

[fol. 800] A. Possibly.

Q. In all these conversations did you ever disclose your name?

A. No.

Q. Did they ask you your name?

A. Yes, every time.

Q. You would not give it?

A. Eventually they convinced me—

Q. Did they ask you your name?

A. Yes.

Q. Did you ask the people you talked to their name?

A. No.

Q. Did you know who you were talking to?

A. Yes, I knew they were F.B.I. representatives.

Q. You had no knowledge of the identity of the persons on the other end. Did you tell them about the Clunes?

A. Yes.

Q. Did you tell them you were discussing the Communism with the Clunes?

A. Yes.

Q. When did you first disclose your identity to the F.B.I.?

A. I believe that was early 1949.

Q. Was this before you met Mr. Noto?

A. Yes.

Q. When you disclosed your identity to the F.B.I., did you make an appointment to see anybody?

A. No.

Q. Weren't you asked to come to the office?

A. Yes.

Q. You did not go?

A. I told them I did not want to get deeply mixed up in the thing, but—I didn't want to become deeply involved in this thing. I told them I would continue to telephone things to them that I thought they should know.

Q. You did not give them your name?

A. At that time I had given them my name.

Q. Did anybody from the F.B.I. office come to see you?

A. I don't believe so.

Q. Did you make any reports from that time on?

A. Yes.

Q. When did you start making written reports?

A. I think around June, 1949.

Q. Was that before or after you met Mr. Noto?

A. Before.

Q. Your first reports were about the Clunes?

A. And friends of theirs that I met in their home.

Q. Did you give detailed reports?

A. These were not detailed, names and some of the [fol. 802] things they discussed.

Q. Were they reports of the Communist Party?

A. Yes.

Q. Mr. and Mrs. Clune still in Buffalo?

A. I believe so.

Q. Have you ever been arrested or indicted to your knowledge?

A. Not to my knowledge.

Q. You have been in Buffalo?

A. Yes.

Q. How often would you send in reports to the F.B.I.?

A. That would depend on whether I had any information I thought they should have.

Q. Did you have any regular time to send in the reports?

A. No.

Q. During 1949 how many written reports did you send in?

A. I don't believe I can tell you that.

Q. You received no pay for your services during 1949?

A. No.

Q. During 1949 your services were on a patriotic basis?

A. That is right.

Q. Did you read any of this literature, Mr. Clune gave you?

A. I began reading the literature when the Bureau asked me to report things in writing.

[fol. 803] Q. Before you had met John Noto?

A. Yes.

Q. Did you continue to send written reports in to the F.B.I. 1949, 1950, 1951, 1952 during your work?

A. That is right.

Q. How often would you say you sent in written reports of 1950?

A. That I cannot tell you.

Q. How often would you send in reports of 1951?

A. I could not tell you that, either.

Q. How many times would you say you sent in written reports in 1952?

A. I am afraid I could not tell you that.

Q. When did you have your first personal interview with any representatives of the Government?

A. In the summer of 1949.

Q. You said the summer of 1949?

A. Yes.

Q. Where did that take place?

A. At the Headquarters of the F.B.I.

Q. Where?

A. 400 Federal Building.

Q. In this building?

A. Yes.

Q. Whom did you talk to?

[fol. 804] A. Mr. George Lankes.

Q. When did you next see anybody personally from the F.B.I.?

A. Probably a matter of a month later.

Q. From that time on did you have any regular contacts?

A. Yes.

Q. How often would you see them?

A. Monthly at least.

Q. Is that when you submitted written reports?

Mr. Henderson: I would like to object to this line on the ground this is a disclosure of investigative techniques. I think it is incompetent and irrelevant. He may ask him

about the reports and the contents, but I object on the ground it is an investigative technique of the Government.
The Court: I will receive it.

Q. Did you submit written reports on the monthly contacts with the F.B.I.?

A. No.

Q. How would you send them?

A. They were mailed.

Q. Dropped them in a mail box?

A. To an address they gave me.

[fol. 805] Q. Not to this building?

A. It was to a Post Office Box.

Mr. Henderson: I renew my objection, this method is adopted by the Government as a technique. I object to it on the ground of having a disclosure of the technique of the Government investigation. I object to any further comments on anything in which the F.B.I.—

The Court: I don't think he throws any description about that.

Mr. Henderson: If this goes farther I have to continue this objection on the ground this is a matter of the Government's business and subversive proceeding and will continue the procedure, I presume.

The Court: Objection overruled. Let us get along.

Mr. Henderson: May I take an exception?

Mr. McDonough: I think we have a right to full disclosure.

The Court: Exception is noted.

Q. You mailed them into a Post Office Box?

[fol. 806] A. Yes.

Q. Did that continue to 1952?

A. Yes.

Q. You started getting paid in 1950?

A. Yes.

Q. Were you paid on a per diem basis or some other basis, maybe you don't know what "per diem" means, were you paid by the day?

A. No.

Q. By the hour?

A. No.

Q. Was Mr. Lankes the man you talked to every time?

A. No.

Q. You talked to different representatives of the F.B.I.?

A. Yes.

Q. Did any of the representatives come to your home?

A. Yes.

Q. On how many occasions?

A. Two.

Q. What year?

A. 1949.

Q. The only time any F.B.I. men came to your home were on two occasions in 1949?

A. I believe there were a couple of other occasions for a short period of time.

[fol. 807] Q. When?

A. In 1951.

Q. When in 1951?

A. Possibly the latter part of June; first part of July.

Q. Did you see them there?

A. Yes.

Q. Did you talk to them?

A. Just for a short period of time.

Q. How long were they there?

A. Probably five or ten minutes.

Q. June or July, 1951?

A. That is right.

Q. You testified before the Grand Jury, did you not?

A. Yes.

Q. Prior to your Grand Jury testimony, did you examine the reports which you had sent in to the F.B.I. from 1949 up to the time you testified before the Grand Jury?

A. No.

Q. Have you seen any of these reports since you mailed them in?

A. No.

Q. Any reports you sent in in 1949, you have not seen since?

A. No.

[fol. 808] Q. You have never seen any of the reports to the F.B.I.?

A. No.

Q. They did not show them to you to refresh your recollection?

A. No.

Q. Didn't you make notes of your own?

A. No.

Q. Don't you have any notes of any of these occasions you have told us about in 1949, 1950 or 1951?

A. No.

Q. When you went into the Grand Jury to testify, you were testifying on your unaided memory of events starting back in 1943?

A. Yes.

Q. How long ago was it you testified before the Grand Jury?

A. That was a year ago November or December.

Q. 1954?

A. Yes.

Q. At that time you were relying on your unaided memory?

A. Yes.

Q. Yesterday and today in detailing all these conversations you are relying on your unaided memory?

A. Yes.

Q. You have not had the benefit of your reports that you sent to the F.B.I.?

A. No.

[fol. 809] Q. Before you came to court were you given that Grand Jury testimony to read over?

A. No.

A. You did not have the benefit of that?

A. No.

Q. Do you remember what you told the Grand Jury?

A. Yes.

Q. Do you remember all of it?

A. Basically I believe.

Q. I presume yesterday and this morning on direct examination by the United States Attorney you have given us your full and complete recollection of all the conversations and talks you had with the defendant John Noto from the time you first met him in 1949 until some time in the fall of 1951, when you say you last saw him?

A. Not all the conversations.

Q. Do you think there is anything you told the Grand

Jury that you did not tell yesterday, or anything you told yesterday that you did not tell the Grand Jury?

A. I don't believe so.

Q. You think the statements you told the Grand Jury are about the same as you told yesterday and today?

A. Basically.

Q. With respect to these conversations you had with [fol. 810] Mr. Noto, had you given us your full complete and best recollection of the substance of these conversations?

A. Of certain conversations, not all of them. There were many.

Q. With respect to the conversations concerning which you were questioned, have you given us your full, complete and best recollection of what took place?

A. Yes.

Q. With respect to those conversations you have not held anything back?

A. No.

Q. You said you first met Noto in the fall of 1949?

A. That is right.

Q. Who did you tell us was party chairman in Erie County then?

A. Al Lutsky.

Q. Sure of that?

A. He was introduced to me on that basis.

Q. How many times did you meet Al Lutsky?

A. Possibly three or four times.

Q. You knew him to be Erie County Communist Party Chairman?

A. I was told that.

Q. Did you ever join the Communist Party?

[fol. 811] A. Yes.

Q. When and where?

A. At the home of Frances Clune, and this was ten days to two weeks previous to my meeting with Noto.

Q. You were a member before you met Noto?

A. I believe I would not have met Noto.

Mr. McDonough: I move to strike it out.

The Court: Strike it out.

Q. Were you a member before you met Noto?

A. Yes.

Q. Did you pay dues?

A. Yes.

Q. To whom?

A. Frances Clune and John Noto.

Q. How much dues did you pay?

A. It varied.

Q. How much did you pay when you first joined?

A. \$3.00.

Q. For what?

A. I was not told for what period. Frances Clune asked me to give her \$3.00.

Q. Did she say it was for dues?

A. Yes.

Q. When did you next pay dues?

A. Approximately a month later.

[fol. 812] Q. To whom did you pay it?

A. Frances Clune.

Q. How much?

A. \$4.00.

Q. Were you asked or did you ask what time that period covered?

A. I did not ask, and I was not told.

Q. When did you next pay dues?

A. Approximately a month later.

Q. To whom?

A. John Noto.

Q. How much?

A. I believe that was \$3.00.

Q. Did you ask what period of time was covered, or were you told?

A. No.

Q. When did you next pay dues?

A. Approximately a month later.

Q. To whom and how much?

A. I believe Frances Clune, and I believe it was \$3.00.

Q. Did you ever ask what period of time these amounts you paid covered?

A. No.

Q. How often do you claim you paid dues, \$3.00?

A. I would say roughly over a period of time up until [fol. 813] 1952, possibly ten months out of each year.

Q. How much do you say you paid each time?

A. It ran from \$3.00 to \$5.00.

Q. You claim between \$30.00 and \$50.00 dues a year?

A. Yes, and gave other moneys besides.

Q. Did you get any receipts for it?

A. No.

Q. Did you ask for any?

A. No.

A. What club did you belong to?

A. There was no club in existence at that time.

Q. Did you go to any meeting?

A. Yes.

Q. Where?

A. At the home of the Clunes.

Q. The only place you went to?

A. Yes.

Q. The only Communist meetings you attended were at the Clune home?

A. Yes.

Where was that?

A. 156 Stratford Road, Buffalo.

Q. You say when you met Noto in the Fall of 1949, you were already a party member?

A. Yes.

[fol. 814] Q. I think you mentioned something about he told you he thought you would do better work if you worked underground?

A. Yes.

Q. By "underground" you mean not to disclose your membership with the Communist Party?

A. Yes.

Q. If you had disclosed your membership in the Party around the N.F.T., what do you think would have happened?

Mr. Henderson: I object. I will let him answer, I will withdraw the objection.

A. I don't know.

Q. You would have been fired, would you not?

A. I could not say that.

Q. You did not tell that?

A. No.

Q. You say that is what the underground part of it was?

A. That is right.

Q. You were supposed to get members for the Communist Party?

A. No.

Q. You were not supposed to get members for the Communist Party?

A. No.

[fol. 815] Q. You had heard a lot about the Communist Party in the four years before you met Noto?

A. I had.

Q. You had been hearing about it from the Clunes since 1943?

A. Yes.

Q. I suppose you had read everything in the newspapers about the Communist Party?

A. Not everything.

Q. You read in 1948 about the indictment of the 11 National leaders in New York City?

A. Yes, I believe I read something.

Q. The papers were full of it?

A. I never had much time to read papers in those days.

Q. Did you have time to read Communist literature?

A. Later I did.

Q. Most of it you threw away?

A. What was given to me early.

Q. When you contacted the F.B.I.—when was it?

A. 1949.

Q. When did you start your telephone calls?

A. I could not give you the exact date.

Q. I forgot what year?

A. I would say possibly 1947 or 1948.

Q. Didn't they tell you to hold on to anything you got [fol. 816] in the way of propaganda and literature?

A. They did not know me by name.

Q. 1949, you knew the Government was investigating the Party?

A. Yes.

Q. You were part of that investigation?

A. Yes.

Q. You were out to get evidence?

A. That was not the request made to me.

Q. That was your desire?

A. My desire—

Q. Was it your desire to get evidence against the Communist Party?

A. My desire was to co-operate.

Q. November, 1949, shortly after you met Noto the first time, you again met him in November, 1949, he told you not to call him directly, but call Mrs. Clune and tell her you wanted to talk to your mutual friend?

A. Yes.

Q. He told you the phones were tapped?

A. Yes.

Q. Do you know personally whether or not the phones were tapped?

A. No.

Q. The Government had a much better source of information [fol. 817] than the tapping of the telephone?

A. I don't know that.

Mr. Henderson: Just a moment. I object to that.

The Court: I sustain the objection.

Q. You told us at that time you got this copy "For Lasting Peace," Exhibit 54?

A. Yes.

Q. Did you hold onto that, or turn it over to the F.B.I.?

A. I turned it over to the F.B.I. within a week.

Q. You said Mr. Noto asked you to read it thoroughly?

A. Yes.

Q. He did not ask you to pick out any particular portion, but asked you to read it thoroughly?

A. Yes.

Q. He asked you to read Exhibit 74, he asked you to read this Exhibit 74, October, 1949, of "Political Affairs" thoroughly, did he not?

A. Yes.

Q. He did not ask you to pick out any one article and read it, but asked you to read it thoroughly?

A. Yes.

Q. When he gave you the history of the Russian Revolution, Exhibit 75, he asked you to read that thoroughly?

A. Yes.

Q. He did not ask you to pick any one paragraph or page [fol. 818] or chapter?

A. Re-read it and study it.

Q. I think that was the time you told us he was not any expert?

A. That is right.

Q. If you had any questions he would try to answer them?

A. Yes.

Q. Did you read Exhibit 75, the history of the Russian Revolution?

A. I never had time to read it.

Q. Did you intend to read it?

A. No.

Q. Whether you had or not that did not make any difference?

A. No.

Q. Did you read Exhibit 74?

A. No.

Q. Did you intend to read it?

A. I possibly would have read something in it if I had the time.

Q. Did you ever get around?

A. I did not.

Q. Did you read Exhibit 54?

A. I glanced at it superficially.

Q. Did you ever read it thoroughly?

[fol. 819-849] A. No.

Q. Did you subscribe to this?

A. No.

Q. Was this the only copy you ever saw?

A. Possibly two or three occasions he brought that to my home.

Q. At any time did you ever visit Party Headquarters, 75½ West Chippewa Street or 921 Main Street?

A. He told me to stay away.

Q. What was the extent of your education?

A. I have a high school education.

[fol. 850-851] The Court: I thought you testified your services ended in 1952 with the F.B.I.

The Witness: It did, but there were many reports I sent in after that time, anything that came to my attention I telephoned in.

The Court: Your services for money ended in 1952?

The Witness: Yes.

.

[fol. 852] CHARLES REGAN, called as a witness by and in behalf of the Government, having been first duly sworn, testified as follows:

Direct examination.

By Mr. White:

Q. Will you state where you reside?

A. 96 Norwood Avenue, Buffalo, New York.

Q. How long have you lived in Buffalo?

A. 1938.

Q. Married?

A. Yes, sir.

Q. Have any children?

A. No children.

Q. What is your occupation?

A. I am crib attendant.

Q. What is a crib attendant?

A. I have charge of a crib at the place I work.

Q. Where is that?

A. Harrison Radiator.

Q. Buffalo?

A. Yes.

Q. Are you a member of any union?

A. Yes, U.A.W. 634.

Q. What education do you have?

A. High school and business college.

[fol. 853] Q. Have you ever been a member of the Communist Party of the United States?

A. Yes; I have.

Q. During what period was your membership?

A. 1943 to 1953.

Q. During that period of membership did you report on the activities of the Communist Party to the United States Government?

A. Yes, I did.

Q. During that entire period?

A. Yes.

Q. What was the nature of your report?

A. Usually it was written, and sometimes verbal personal contact, telephone, all depended on the situation.

Q. Tell us what method you used in acquiring membership?

A. I attended a May Day meeting, first of May, 1943, Kleinhaus Music Hall. I signed an application card at this meeting.

Q. Who was present?

A. Earl Browder, he was chairman of the Party of the United States at that time.

Q. Were you actually received into the Party at that meeting?

A. Shortly after that.

Q. State briefly the clubs you have belonged to and [foi. 854] positions you have held.

A. Shortly after joining I was transferred to the Riverside Club. Shortly after the membership I was elected the president of the club, president of the Riverside Club probably a year. Communist Party was abolished, communist Political Association was involved. I was transferred to downtown, under the Communist Political Association, which I became treasurer of the Downtown Club, when the Communist Political Association was abolished. I was transferred to the Riverside Club and became president of the Riverside Club.

Q. When was that?

A. 1946. Shortly after I was transferred to the Industrial Section, new section. At this time I was a member of the County Committee in the Industrial Section. I became literature director. Shortly after that I was transferred out of the Riverside Club into a club known as "General Motors Club" which was a shop club composed of members of the shop.

Q. Can you state the approximate period of your transfer?

A. That was 1946.

Q. How long did you remain in this club?

A. To 1953.

Q. Were you at some time a member of the Industrial [fol. 855] section?

A. Yes.

Q. How long did that continue?

A. 1946 to 1953, industrial section and industrial commission.

Q. What was the function of the General Motors Club?

A. The main function of the General Motors Club was to build the Party within the shop.

Q. Were there other clubs in this industrial section than the General Motors Club?

A. Yes, there were a half dozen.

Q. State some of those.

A. The main club was the Westinghouse Club, Bond Club of the American Radiator Plant, then there was what was called the Steel Club, small steel plants, fabricating plants.

Q. You mentioned you were literature director, what were your duties as a literature director?

A. To sell literature to members of the industrial section. I attended industrial section meetings sold literature, that is, members would take literature to their clubs.

Q. During that period as literature director and thereafter, during that period as literature director, did you have any contact with the defendant John Noto?

A. Yes, I did.

[fol. 856] Q. If you see him in the court room will you point him out?

A. Sitting right here.

Q. During what period did you have contact with John Noto?

A. 1946 to 1951.

Q. State what position the defendant held during the period of your association with the Communist Party.

A. He first was organization secretary of Erie County.

Q. When was that?

A. 1946.

Q. Any other positions?

A. From organization secretary he went to County Chairman.

Q. When was that?

A. That was 1946 or 1947.

Q. Did there come a time he attained another position?

A: Yes, he was later promoted to District Chairman of the Party, up district of New York State.

Q. Upstate District?

A. Yes.

Q. Where would you obtain this literature that you would use in your duties?

A. Communist Headquarters.

Q. Where was that in the beginning of your duties?

A. 75-1/2 West Chippewa Street, and 921 Main Street.

Q. In connection with your duties as literature director, [fol. 857] did you have any contact with the defendant?

A. Yes.

Q. State what that contact was.

A. I received literature from him, certain amount of discussion about the literature about selling it, the quantity.

Q. Did you ever do that?

A. Yes.

Q. I am going to read to you a number of exhibits already in evidence, and state whether or not these are some of the books and material you acquired as literature director circulated at your club and present at your headquarters.

The Court: I suggest you show them all to him, and then you can read the list instead of questioning him about each one.

Q. Exhibit G-8, "Communist Manifesto". G-13, "Foundations of Leninism". G-14, "Problems of Leninism". G-15, "State and Revolution". G-16, "Left Wing Communism and Infantile Disorder". G-17, "Imperialism". G-18, "What is to be Done". G-20, "History of the C.P.S.U.". G-21, "Strategy and Tactics". G-22, "Dictatorship of the Proletariat". G-23, "Theory of the Proletariat Revolution". G-24, "United Front Against Fascism". G-26, [fol. 858] "Proletariat Revolution and the Renegade Kautsky". Were there also papers and other pamphlets available at Party Headquarters?

A. Yes.

Q. Will you state what some of those were?

A. Daily Worker, Sunday Worker, Political Affairs, For a Lasting Peace, certain pieces of literature that were popular at the time written by leaders of the Party, Foster and Dennis in pamphlet form.

Q. You mentioned you had been in this downtown club?

A. Yes.

Q. What occurred in the Communist Party that caused this club to be dissolved?

A. Series of conventions that caused the club to be dissolved created by an article criticising the American Communist Party, articles by Duclos.

Q. Where was that article published?

A. In the Daily Worker.

Q. Did you read it?

A. Yes, sir.

Q. Did you attend any Communist Party meetings during this period with relation to the Duclos article?

A. Yes, I did, several meetings.

Q. Any of them stand out in your mind?

A. One in particular, in which the leadership indulged in a lot of criticism.

[fol. 859] Where was it held?

A. Party Headquarters, 75-1/2 West Chippewa Street, local leadership, Sam Goldman, Clara Lester, she was organizational secretary, Donald Lester, Upstate Co-ordinator, and County Treasurer Gertrude Hessler.

Q. Did you attend any state conventions in that Party?

A. I did.

(Thereupon document marked Government's Exhibit G-77 for identification.)

Q. I show you what has been marked G-77 for identification, and I ask you if you can identify that?

A. Yes, sir, this is a notice of a special state convention dated July 5, 1945.

Q. You attended that convention?

A. I did.

OFFERS IN EVIDENCE AND OBJECTIONS THERETO

Mr. White: The Government will offer this.

Mr. McDonough: I object to it on the grounds previously stated, it is dated July 5, 1945, that is when the defendant was in the Army.

The Court: You already have about the state convention. Is it necessary to have the notice?

Mr. White: No, but I wish to establish, it is the same [fol. 860] convention was attended by a person from Buffalo, and same organization the defendant later became a member of showing the character and nature of the Buffalo Party.

The Court: I will receive it.

(Thereupon Government's Exhibit G-77, previously marked for identification, received in evidence.)

Mr. White: Entitled "Niagara Frontier Council, Communist Political Association".

"Dear Comrades: The historic state and national conventions to be held in the coming weeks will decide the course of the Communist Organization for many years to come. These conventions will not only act on immediate policy and tactics, but they will determine whether or not the American Communists will develop a genuine Marxist organization and strategy, capable of leading the working class of the most powerful imperialist country in the world."

Mr. McDonough: May I see it, your Honor? I think I have a right to examine it and read any portions I desire. [fol. 861] The Court: Oh, yes.

Mr. McDonough: I would like to read the balance of this.

The Court: All right.

Mr. McDonough: You read the first paragraph?

Mr. White: Yes.

Mr. McDonough: I will continue: "In view of the importance of these special conventions, we urge you to take steps to assure the fullest democratic participation of your membership in the discussion and vote on the resolution as well as in the election of delegates to the state convention.

"The State Convention will meet in two sessions—one before the National Convention, on July 21st and 22nd, and the other after the National Convention, on August 11th and 12th. The first session will discuss the National Committee Resolution, act upon basic policy, examine national and state leadership, and elect delegates to the National Convention. The second session will discuss the [fol. 862] decisions of the National Convention, the tasks

and perspectives facing the N.Y. State Communist movement, and the election of a State leadership. Both sessions will be held in New York City.

“Discussion on the Resolution.

1. To allow maximum opportunity and time for discussion, each club is urged to arrange for two more meetings before the convention, the weeks of July 9th and July 16th.

“2. Full expression of all views should be encouraged before a vote is taken.

“3. It is suggested that a final vote on the resolution be taken at the meeting of July 9th week. The vote must be recorded and sent to the council, indicating how many voted for it, how many against, and how many abstained.

“4. All members should be encouraged to propose amendments, suggestions, criticisms, etc., either to be written [fol. 863] to the Discussion Bulletin, or to be given in writing to the delegates as instructions, or both.

“Delegates.

“1. Delegates are to be elected on the following basis:

“In large clubs: 1 delegate for every twenty-five (25) members in good standing (dues paid through June, 1945) or major fraction thereof.

“1 alternate for every 3 delegates or major fraction thereof.

“In small clubs: 1 delegate and 1 alternate must be a member for at least one year, and must be in good standing.

“2. A candidate for delegate or alternate must be a member for at least one year, and must be in good standing.

“3. Only those members who are in good standing can vote for delegates and alternates.

[fol. 864] “4. Voting for delegates is to be by secret ballot.

“5. It is proposed, especially in the big clubs, that nominations of delegates to be held one meeting in advance of elections, and that the list of nominations be sent out to the membership together with notice of the election meeting.

“6. It is suggested that at the election meeting, each candidate rise and state his position on the resolution so

that the membership will be sure to vote for those delegates that really represent the membership's will.

"7. It is suggested that the vote for delegates be completed before the voting for alternates takes place.

"8. Clubs are asked to turn in names of delegates and alternates to the Council office no later than Wednesday, July 18th.

[fol. 865] "9. A meeting of the Niagara Frontier delegation will be held on Thursday, July 19th at 8 P.M., at 751 1/2 W. Chippewa Street, Buffalo.

"10. The Club President must arrange to get the credentials in person from the Council office.

"Convention assessment.

"There is to be a Convention Assessment of \$1.00 for those who pay \$3.00 quarterly dues, and 50¢ for those who pay \$1.00 quarterly dues. This assessment is to help defray expenses of the Convention. The State Office is paying expenses of all delegates. Please make sure of 100% assessment payments as quickly as possible.

Fraternally yours, Sam Coleman, President. Clara Lester, Secretary."

[fol. 866] Q. What was the Communist Party known as during this period when this was sent to you?

A. Communist Political Association.

Q. Did you attend this convention in 1945?

A. Yes, I did.

Q. How many sessions were there?

A. Two.

Q. Was this draft resolution, any action taken in relation to it?

A. It was discussed and accepted at the first convention.

Q. I direct your attention to the 1946, and ask you if you attended any Communist Party meetings or functions in that year?

A. Yes.

Q. Do you have a recollection of attending a conference in that year?

A. Yes, first part of 1946 I attended an Upstate Conference.

Q. Where was that held?

A. Hotel Touraine, Buffalo, New York.

Q. Were there delegates?

A. There were elected delegates at this conference from Upstate cities.

Q. Did you attend as delegate?

A. Yes.

Q. What cities were represented?

[fol. 867] A. Buffalo, Jamestown, Niagara Falls, Rochester, Syracuse, Binghamton.

Q. Who were some of the people present at this conference?

A. State and National Leadership were here.

Q. Who?

A. William Z. Foster and Robert Thompson.

Q. What was done at this conference?

A. Upstate sub-district was formed.

Q. Any elections held?

A. Yes, officers and members of the Upstate Committee were elected.

Q. Who were some of the people?

A. Norman Ross was elected Chairman of the Upstate District, Sam Goldman and Kinsey were elected to various committees.

Q. Were any veterans elected?

A. There were, there were five or six of them, they were elected in absentism, they were automatic.

Q. Who were some of those?

A. I recall two from Buffalo, Sver Katz, John Noto.

Q. What were they elected to?

A. Upstate Committee.

Q. What is your recollection as to the first occasion on which you met the defendant John Noto?

A. I met the defendant in the Communist Headquarters [fol. 868] in Buffalo shortly after this conference, early in the spring or late winter 1946, shortly after he got out of the Army.

Q. Who was present on that occasion?

A. His father, Samuel Goldman, who was Erie County Chairman of the Party.

Q. Who introduced Noto to you?

A. Samuel Goldman.

Q. Do you recall what he said?

A. He said, "John Noto, Comrade from Rochester, was formerly active in the Y.C.L."

Q. Was that the Young Communist League?

A. That is right.

Q. When did you next meet John Noto?

A. I met John Noto next in, possibly towards the end of the year, it was toward registration period in the fall, probably November, he attended a meeting in Communist Party Headquarters, I believe the meeting was for club membership, a leading Communist of the Party.

Q. Was Noto introduced at this?

A. He was introduced as new Organization Secretary.

Q. Do you have any recollection of what he spoke about?

A. He had a prepared statement. He spoke about registration, Party building. He referred to a report on activities of two European Parties, I believe Bulgarian and Czech Parties. He said methods of work in Erie County follow the same line as these two European Parties.

Q. Did the Communist Party have a registration drive in 1946?

A. It started about the time of this meeting.

Q. Who was in charge of that?

A. John Noto.

(Thereupon document marked Government's Exhibit G-78 for identification.)

Q. I show you Government's Exhibit G-78 for identification and ask you if you can state what that is?

A. This is instructions for carrying out 1946 and 1947 Party registration.

Q. Was that a copy which you received?

A. I had received it. I received it November 8th, 1946, followed by my initials, it is in pencil.

Q. Did you fill out such a form?

A. I filled out the attached card, yes.

Mr. White: The Government offers this in evidence.

The Court: Received.

(Thereupon Government's Exhibit G-78, previously marked for identification, received in evidence.)

[fol. 870] (Thereupon document marked Government's Exhibit G-79 for identification.)

Q. I show you Government's Exhibit G-79 for identification and ask you if you can state what that is?

A. This is an announcement to a Communist Party meeting, meeting to be held January 17, 349 Broadway.

Q. Did you attend that meeting?

A. Yes, I did.

Q. Whose name appears at the bottom of that?

A. John Noto, the defendant.

Mr. White: The Government will offer this.

The Court: Received.

(Thereupon Government's Exhibit G-79 for identification, received in evidence.)

Mr. White: The date appearing on the mimeograph is January 9. The date of the meeting is January 17.

Q. Was William Z. Foster present?

A. Yes, he was.

Q. Who was he at that time?

A. He was Chairman of the Party of the United States of America.

Q. Did he speak at this meeting?

A. Yes, he did.

Q. Tell us what he said.

[fol. 871] A. He spoke on Party building, he urged everybody, there were a lot of people were not members, he asked everybody at the meeting to become members.

Q. Did a change in leadership take place in Buffalo in 1947?

A. Yes, there was, the early part of 1947.

Q. Did you attend a meeting in relation to that?

A. Yes.

Q. Where was that held?

A. Meeting of the County Committee, 75½ West Chipewa Street.

Q. Who were some of the people there?

A. Mr. Goldman, Lloyd Kinsey, Norman Ross, John Noto, the defendant.

Q. What was this change in leadership?

A. John Noto was elevated to the position of County Chairman, replacing Sam Goldman.

Q. Subsequent to this meeting, do you recall a contact with the defendant in which he asked you to go to New York City?

A. Yes; I do, very well.

Q. Where did this take place?

A. Communist Party Headquarters, 75½ West Chipewa Street.

Q. What part of the year?

[fol. 872] A. Early in the spring or late winter of 1947, February or March.

Q. What conversation took place between you and he at that time?

A. John Noto said there was a conference in New York City on creating a Commission in the United Auto Workers by the Communist Party. He said "Due to my experience in the dye workers in Buffalo, knowing the members, I was the only one available to attend this meeting, that I had to go."

Q. Did you attend such a meeting?

A. I did.

Q. Did you subsequently report on it to the defendant?

A. Yes.

Q. Where was this meeting held?

A. Communist Party Headquarters, 35 East 12th Street.

Q. New York City?

A. New York City.

Q. With whom did you meet down there?

A. Bill Norman who was director of the New York State Trade Union of the Party—Hal Simon, I am sorry.

Q. Who did you say Hal Simon was?

A. Trade Union.

Q. Anyone else present?

A. Yes, there was four or five other people there.

[fol. 873] Q. Do you know who they were?

A. They were introduced by their first name only. I don't recall. One elderly woman, whose name was Dora.

Q. Never learned their last name?

A. No.

Q. Did you have any difficulty getting in to see Hal Simon?

A. Yes.

Q. State what that was.

Mr. McDonough: I object to it, how can this be binding on the defendant, he was not there. I object to it, incompetent, irrelevant and immaterial.

Mr. White: He went there at this man's direction.

Mr. McDonough: I don't care, we can't meet proof like this.

The Court: What is the purpose of this?

Mr. White: Referring to the whole meeting or this incident.

The Court: What difference does it make whether he had difficulty?

Mr. White: I will withdraw the question.

The Court: Unless it is material, why ask it?

Q. What took place at the meeting?

[fol. 874] A. We discussed penetration of the United Auto Workers by the Communist Party.

Q. State what was said and by whom.

A. Hal Simon—

Mr. McDonough: I object to it on the same grounds. I think I should object to this line of questioning, not binding on the defendant.

The Court: Objection overruled.

Q. You may answer.

A. Conference concerned the penetration of the United Auto Workers by the Communist Party. We discussed various automobile shops, automobile workers, where the Union represented the employees, and Communist Party activities within the Union, and decided to concentrate on building the Party within these shops and the Union within the shops. I recall one shop mentioned was the Chevrolet Motor Company Plant in Tarrytown, New York, in which they were going to send people to get jobs and later on assume positions in the Union to take leadership in the Union.

Q. Did you received any assignment?

A. Yes, sir, Hal Simon asked me to return to Buffalo and get information regarding the number of people within the United Auto Workers in Buffalo, also the number of [fol. 875] united members in the Buffalo area.

Q. Did you do that?

A. I did that, yes.

(Thereupon document marked Government's Exhibit G-80 for identification.)

Q. I show you Government's Exhibit G-80 for identification, and ask you to state what that is, if you can identify this.

A. This is a notice regarding a meeting in Communist Party Headquarters to be held March 17, 1947.

Q. Did you attend that meeting?

A. I did.

Q. Is this your copy?

A. That is my copy received in the mail, and signed by myself.

Q. Whose name appears at the bottom of this?

A. The defendant, John Noto.

Mr. White: The Government will offer this in evidence.

The Court: Received.

(Thereupon Government's Exhibit G-80, previously marked for identification, received in evidence.)

The Court: We will recess until 2:15.

(Whereupon a recess was taken until 2:15 o'clock P.M.)

[fol. 876] AFTER RECESS, 2:15 o'clock P.M.

APPEARANCES: Same as before noted.

CHARLES REGAN, resumed the stand and testified further as follows:

Direct examination (resumed)

By Mr. White:

Q. Prior to the recess, we were discussing a meeting you attended at Communist Party Headquarters in March, 1947. Do you recall that meeting?

A. Yes, I do.

Q. Will you state whether or not the defendant was present at that meeting?

A. He was.

Q. Did he give a talk at this meeting?

A. He gave the main report.

Q. Will you state what he said?

A. He discussed the attacks on the Party and Party building.

Mr. McDonough: Is this the meeting of March 17th?

Mr. White: That is correct.

The Witness: He said, at the present time we were going through was the same as in Marx and Lenin, and that it [fol. 877] would eventually lead to a crisis.

Q. Is that all you recall?

A. I believe that is all.

Q. Subsequent to this meeting of March, do you recall an incident involving a local report?

A. Yes, I do very well.

Q. State where and when that took place.

A. In the Fifth Ward, I went over to attend a meeting of the General Motors Club at the place called the Fifth Ward Headquarters Party, 62 Peckham Street.

Q. Approximately when in time was this?

A. In March or April, 1947.

Q. Who was present on this occasion?

A. The defendant John Noto, Elmer Lumpkin, Sr.

Q. Will you state what was said at this meeting?

A. Lumpkin was talking about a visit to his home by a local newspaper reporter. He said the reporter came to his home. They let him in and answered a lot of questions. This upset John Noto very much.

Mr. McDonough: I object to that.

The Court: I sustain the objection. Strike it out.

Q. Tell us what John Noto said:

A. John Noto said Lumpkin should never let the reporter into the house. Should not have answered any questions. He said "Sometime I will see the time we can stand a person like this S.O.B. against the wall and shoot him."

(Thereupon document marked Government's Exhibit G-81 for identification.)

Q. Who was the name of that reporter?

A. Fred Turner, Buffalo Evening News.

Q. I show you what has been marked Government's Exhibit G-81 for identification, and ask you if you can state what that is?

A. This is a notice to a meeting sponsored by the Communist Party in Moeller's Hall, 390 Pearl Street in 1947.

Q. Is that the copy you received?

A. Yes.

Q. Whose name appears at the bottom of that?

A. John Noto, Erie County Chairman of the Communist Party.

Q. Did you attend this meeting?

A. I did.

Mr. White: The Government will offer this in evidence.

The Court: Received.

(Thereupon Government's Exhibit G-81, previously marked for identification, received in evidence.)

[fol. 879] (Thereupon three documents marked Government's Exhibits G-82, G-83 and G-84 for identification.)

Q. Was there a speaker at this meeting?

A. Yes.

Q. Who was that?

A. John Noto, Chairman of the Communist Party.

Q. Do you have a recollection of what he said and, if so, please state it?

A. Yes, he said the present loan to Turkey and Greece were a smoke screen for an attack by Wall Street on the Soviet Union, that Wall Street hoped to gain world markets.

through the war of the Soviet Union, and he said this country, United States, was the World's leading imperialistic country.

Q. Did you come to meet an individual by the name of John Wells?

A. Yes.

Q. Who was John Wells?

A. He was a negro employed in the Chevrolet Delavan Plant, Buffalo, New York.

Q. Where did you meet him?

A. General Motors Club meeting, 62 Peckham Street.

Q. What was 62 Peckham Street?

A. It was Party Headquarters in the Fifth Ward.

[fol. 880] Q. Was the defendant present on this occasion?

A. He was.

Q. Did a discussion develop?

A. Yes, he led the discussion.

Mr. McDonough: May we heard when it was?

Q. When was it?

A. Probably April or May, 1947.

Q. State the discussion that took place.

A. Discussion took place concerning fight for negro rights. The defendant said the only way the negro people could achieve equality with the white was through the leadership of the Communist Party in driving out the capitalist class.

Q. I show you Government's Exhibits G-82, G-83 and G-84, and ask you to state what those are.

A. Yes, sir, they are notices to attend classes, three classes.

Q. What was the subject of the class?

A. Imperialism.

Q. Do you have any recollection of who taught these classes?

A. Very well, Lloyd Kinsey, Mrs. Beatrice Mohair and Mrs. Johnny Ellis.

Mr. White: The Government offers these in evidence. [fol. 881] (Thereupon Government's Exhibits G-82, G-83 and G-84, previously marked for identification, received in evidence.)

Q. Can you state whether or not the defendant was present at all three sessions of these classes?

A. He was.

Q. Who were these people that taught the classes?

A. Leading members of the Communist Party in the Buffalo area.

Q. Was any book used in conducting these classes?

A. Yes, Lenin's Imperialism.

Q. I show you Government's exhibit G-17, and ask you if that is the book?

A. That is the copy.

Q. In the course of your Party activities, did you come into contact—know as the Niagara Organizational Society?

A. Yes.

Q. What *that* was?

A. That was a phony organization developed by the Communist Party.

Mr. McDonough: I object to that and ask to strike it out.

The Court: I sustain the objection. Strike it out.

[fol. 882]. Q. Did you ever attend any meeting sponsored by the Niagara Organizational Society?

A. Yes, several.

Q. State where and when.

A. In the Hotel Lafayette in the summer of 1947.

Q. Can you state whether or not the defendant was present?

A. He was.

Q. Was anyone else present?

A. Yes, Norman Ross, Sam Goldman, Hal Simon, trade Union Director of the Communist Party.

Q. Who conducted this meeting?

A. Norman Ross.

Q. Did John Noto speak at this meeting?

A. Yes, he made an announcement.

Q. What was that?

A. Of classes to be held for industrial workers on Marxism.

Q. Were you selected to attend such classes?

A. I did.

Q. Where and when was that?

A. In the same building, in the same hotel.

Q. When?

A. Possibly a week after this meeting.

Q. Who conducted that class?

A. Irving Weisman.

[fol. 883] Q. Who was Irving Weisman?

A. He was County Organizer at the time, I believe from Binghamton, New York.

Q. Did he use any books in conducting this class?

A. Yes, he did, he used "Left Wing Communism", and "Foundations of Leninism".

Q. I show you Government's Exhibits G-16, and G-13, and ask you if those are the books he used?

A. Yes, these are, "Foundations of Leninism", and "Left Wing Communism".

Q. What, if anything, did Weisman have to say about these books?

A. Weisman I was told was the leading Marxist in New York State, one of the leading Marxists in New York State, in talking about these books, he said that the working class was the Communist Party in a vanguard role, very fortunate in having access to these books. He said everything in these books was coming true today. He said the writings of Joseph Stalin set all Communist Parties world wide.

Q. Did you attend any other classes in the year 1947 sponsored by the Communist Party?

A. Yes, I did.

Q. Prior to attending these classes did you attend any meetings in relation to the actual classes?

[fol. 884] A. Yes, I attended a meeting in Communist Headquarters in which the classes were discussed.

Q. When was that?

A. In the summer of 1947.

Q. Was or was not the defendant present?

A. He was.

Q. Tell the Court and jury what he said on this occasion.

A. He outlined the classes, said there would be classes for industrial workers, Marxist class for industrial workers.

Q. Did he make reference to anyone who might teach these classes?

A. He said there would be teachers from New York. I

don't believe he mentioned any names. There would be Communist Party members from Buffalo go to New York to attend 30-day classes.

Q. When were these classes?

A. I did not attend any of these classes.

Q. Subsequent to this meeting did you attend Communist Party classes?

A. Yes.

Q. In 1947?

A. Yes.

Q. When were they?

A. Late summer of 1947.

[fol. 885] Q. Where were they?

A. Communist Party Headquarters.

Q. How many sessions did you attend?

A. I attended two of the series, I think every week-end, Saturday and Sunday.

Q. Who taught these classes?

A. Communist Party member from New York State, her name was Martha Lewis.

Q. Can you state whether or not the defendant John Noto was present at those classes?

A. He was.

Q. Directing your attention to these classes, was any book used?

A. Yes.

Q. What was that?

A. "Foundation of Leninism."

Q. I show you Government's Exhibit G-13, and ask you if that is the book?

A. That is the book.

Q. Do you recall any particular portion of that book that was the subject of these classes?

A. I recall due to the following classes, both classes were on the Party subject matter in this book, pertaining to the Party was read and discussed. I don't recall the chapter, but a chapter on the Party.

[fol. 886] Mr. White: I would like to read from that, your Honor.

Mr. McDonough: May I have the same objection on the same grounds?

The Court: Objection overruled.

Mr. White: (Reading from Government's Exhibit G-13)
 "Foundations of Leninism."

"The Party", page 107, "in the pre-revolutionary period in the period of more or less peaceful development, when the Parties of the Second International were the predominant force in the working class movement and parliamentary forms of struggle were regarded as the principal forms, the Party neither had nor could have had that great and decisive importance which it acquired afterwards, under conditions of open revolutionary battle. Defending the Second International against attacks made upon it, Kautsky says that the Parties of the Second International are instruments of peace and not of war, and that for [fol. 887] this very reason they were powerless to take any important steps during the war, during the period of revolutionary action by the proletariat. That is quite true. But what does it mean? It means that the Parties of the Second International are unfit for the revolutionary struggle of the proletariat, that they are not militant parties of the proletariat, leading the workers to power, but election machines adapted for parliamentary elections and parliamentary struggle. This, in fact, explains why in the days when the opportunists of the Second International were in the ascendancy, it was not the Party, but its parliamentary group that was the chief political organization of the proletariat. It is well known that the Party at that time was really an appendage and subsidiary of the parliamentary group. It goes without saying that under such circumstances and with such a Party at the helm there [fol. 888] could be no question of preparing the proletariat for revolution.

"But matters have changed radically with the dawn of the new period. The new period is one of open class collisions, of revolutionary action by the proletariat, of proletarian revolution, a period when forces are being directly mustered for the overthrow of imperialism and the seizure of power by the proletariat. In this period the proletariat is confronted with new tasks, the tasks of reorganizing all Party work on new, revolutionary lines, of educating the workers in the spirit of revolutionary struggle for power, of preparing and moving up the reserves, of establishing an alliance with the proletarians of neighboring

countries, of establishing firm ties with the liberation movement in the colonies and dependent countries, etc. [fol. 889] To think that these new tasks can be performed by the old Social-Democratic Parties, brought up as they were under the peaceful conditions of parliamentarism is to doom oneself to hopeless despair and inevitable defeat. If with such tasks to shoulder, the proletariat remained under the leadership of the old parties, it would be completely unarmed. It goes without saying that the proletariat could not consent to such a state of affairs.

"Hence the necessity for a new Party, a militant Party, a revolutionary Party, one bold enough to lead the proletarians to the struggle for power, sufficiently experienced to find its bearings amidst the complex conditions of a revolutionary situation, and sufficiently flexible to steer clear of all submerged rocks on the way to its goal.

[fol. 890] "Without such a Party, it is useless even to think of overthrowing imperialism and achieving the dictatorship of the proletariat.

"This new Party is the Party of Leninism.

"What are the specific features of this new Party?"

Q. Did you study this book "Foundation of Leninism" at both sessions?

A. That is right.

Q. Directing your attention of the fall of 1947, do you recall being present at the home of Svea Katz?

A. Yes, very well, several times.

Q. Approximately when in the fall was that?

A. Possibly close to October.

Q. What was the occasion to be there?

A. It was more or less a going away party.

Q. For whom?

A. John Noto.

Q. Was the defendant there?

A. Yes, he was.

Q. What was said by John Noto, by anyone in his presence?

A. Svea Katz, she said John Noto was leaving the Buffalo area to attend National Training School in New York City.

[fol. 891] Q. Was anything said who might take over his duties?

A. Yes, Russell De Pasquale, he was at the party.

Q. I direct your attention to the year 1948, and ask you if you attended Communist Party functions and meetings in that year?

A. Yes.

Q. What was happening in the Communist Party in the early part of 1948?

Mr. McDonough: I object to that.

The Court: I sustain the objection.

Q. Do you recall attending a meeting in the early part of 1948 in which the subject of general interest of the Party was discussed?

A. Yes, beginning in 1948 discussion within the Party concerned security.

Q. Are you referring to a specific meeting?

A. Yes, I think it was the first general meeting in January, 1948.

Q. Where was this meeting held?

A. Party Headquarters.

Q. Who conducted this meeting?

A. John Noto.

Q. Will you tell us what he said at the meeting?

A. He said that the attacks on the Communist Party at the present time were similar to the Palmer Reds of the [fol. 892] 20's, only much more severe. He said that the National Board of the Communist Party expected the state and county organizations to act on their own initiative in security measures. He also said in as far as he was concerned a club was a club leadership, he had, likewise as far as security.

Q. I show you what is in evidence as Government's Exhibit G-72, and ask you if you can state what that is?

A. Yes, this is a notice of a draft party building plan for the county, April 1st to July 1st, 1948.

Q. Did you attend a meeting in 1948 in relation to this?

A. Yes, I did.

Q. When was that?

A. Late winter or early spring of 1948.

Q. Who conducted that meeting?

A. John Noto, the defendant.

Q. What, if any, use did he make of this exhibit?

A. He quoted from this exhibit.

Q. I call your attention to a section on here where it talks about literature, it refers to "Manifesto", 200, what does that mean?

A. That was the quota, there would be 200 Manifestos sold in this period, that was the quota the Party was shooting for.

Q. Communist Manifesto?

[fol. 893] A. Yes.

Q. "History C.P.S.U. 75"?

A. That was the same thing, that was the number.

Q. It refers to "Ten Classics, 100", is that the same thing?

A. That is Lenin.

Q. Does that refer to a quota, 100?

A. 100 copies.

Q. What is the "Home Library"?

A. That is the 12 volumes of Lenin, elaborate edition, I think it was red or blue.

Q. I show you Government's Exhibit G-73, and ask you if you can state what that is?

A. This is the "Ten Classics of Marxism".

Q. That is the book that is referred to?

A. Classics, yes.

Q. Was there activity in the Communist Party known as worker canvass?

A. Yes.

Q. What was the worker canvass?

A. Worker, was the Sunday Worker, Sunday edition of the Daily Worker, used to have Week-end canvasses, sell the "Worker" from house to house or block to block.

Q. Did you participate in such canvasses?

A. Yes.

[fol. 894] Q. Subsequent to this meeting do you recall participating in a "Worker" canvass?

A. Yes.

Can you state where this took place?

A. This canvass took place, they held a station at the Lumpkin home, 263 Watson Street.

Q. When was it?

A. Possibly May, 1947.

Q. 1947 or 1948.

A. 1948.

Q. Who were the Lumpkins?

A. The last I seen of the Lumpkins, they were leaders of the Communist Party in the Buffalo area.

Q. Prior to this "Worker" canvass did you attend any kind of Party meeting?

A. Yes, it was a brief meeting within the home of the Lumpkins.

Q. Who was present?

A. Elmer Lumpkin, Sr., and the defendant.

Q. State what conversation took place.

A. We discussed the General Motors Club, John Noto said there would be a concentration on the Chevrolet Delavan Avenue Plant on General Motors, he said they endeavored to build the Party within the shop, it was a key shop in the Buffalo area, due to the Communists working [fol. 895] in the shop he said there would be Comrades from New York City try to get jobs within this shop, and if successful, keep their identity secret, more or less go underground within the shop until they secured seniority, in order to have job security, I think it was 90 days employment until you received seniority.

Q. Did any of these people come up here?

A. I believe there is one or two.

Mr. McDonough: I object to this.

The Court: I sustain the objection. You have got to show that he knows it.

Mr. McDonough: I move to strike out the answer.

The Court: Strike it out.

Q. How do you know that these people did come up?

A. One of them I got acquainted with.

Q. Who was that?

A. He was from Corning, New York, first name was Harold, he was a farmer.

Q. You don't recall his last name?

A. Easling or Easterling, I am not sure.

(Thereupon document marked Government's Exhibit G-85 for identification.)

Q. I show you Government's Exhibit G-85 for identification, and I ask you if you can state what that is?

A. This is headed "Notes for teachers on what to stress [fol. 896] on the theories and practice of the Communist Party. Imperialism and the fight for peace".

Q. From whom did you receive that?

A. John Noto.

Q. Does that bear a date?

A. I received it 4/15/48.

Mr. White: The Government offers this in evidence.

The Court: Received.

(Thereupon Government's Exhibit G-85, previously marked for identification, received in evidence.)

Mr. White: I would like to read the title: "Ideological Campaign Material No. 5, Issued by State Ed. Depart., New York Communist Party. Notes for teachers on what to stress on the theory and practice of the Communist Party. Lesson 3, Part I, Imperialism and the Fight for Peace, by William Weinstone."

Mr. McDonough: You are not going to read anything out of that?

Mr. White: No.

Q. Did there come a time in 1948 when a change in leadership [fol. 897] ship took place in the Upstate area of the Communist Party?

A. Yes, in the summer of 1948.

Q. Did you attend a meeting in relation to that?

A. Yes.

Q. Where was that?

A. Communist Party Headquarters.

Q. Place the month.

A. June, I believe.

Q. What occurred at this meeting?

A. Norman Ross presided at the meeting. He said he was being replaced as Upstate Director of the Communist Party in New York City by John Noto.

Q. Was John Noto also present?

A. He was.

Q. Did the Erie County Communist Party hold a convention in 1948?

A. Yes, in June, 1948.

Q. Did you attend that?

A. Yes, I did.

Q. What capacity?

A. Delegate.

Q. Where and when was this convention?

A. That was in the summer of 1948, June or July, held in Communist Party Headquarters.

[fol. 898] Q. Where was Communist Party Headquarters at that time?

A. 921 Main Street.

Q. Who presided at this convention?

A. John Noto.

Q. Do you have any recollection what he spoke about?

A. He discussed the Draft Board resolution.

Q. What did he say about that?

A. I just can't recall at this time.

Q. You don't recall. Would it refresh your recollection if I asked if he mentioned Earl Browder?

A. Yes, it would. He discussed Earl Browder. He said Earl Browder was a hand-shaker of Wall Street. He also said that the capitalist class was its own grave digger.

Q. Was there a National Convention of the Communist Party in 1948?

A. Yes.

Q. Did you attend that?

A. No, I did not.

Q. Did you attend any meeting in Buffalo concerning that convention?

A. After the convention.

Q. Where was this meeting held?

A. Communist Party Headquarters.

Q. Place the month?

[fol. 899] A. August, 1948.

Q. Who presided at this meeting?

A. John Noto.

Q. Will you state to the best of your recollection what he spoke about on this occasion?

A. He discussed the results of the National Convention. He said the election of leadership of the National Committee concerned 13 people. He said the reason for the 13 people being elected was that potential leaders of the Party remain out of office in a security effort of the Party and attacks toward the Party, these people remaining

out of office would come forward in an underground movement and give leadership to the Party.

(Thereupon document marked Government's Exhibit G-86 for identification.)

Q. I show you Government's Exhibit G-86 for identification, and ask you if you can state what that is?

A. This is a pamphlet of instructions on steel concentration.

Q. From whom did you receive that?

A. Russell De Pasquale.

Q. Who was Russell De Pasquale at that time?

A. He was Director of the steel concentration, concentrated on the Lackawanna area.

[fol. 900] Q. When did you receive that?

A. August 9, 1948.

Q. What club were you in at that time?

A. General Motors Club.

Q. Was your club guided by a directive issue or not?

A. Yes.

Mr. White: The Government offers it in evidence.

Mr. McDonough: As I understand it, all this is received over my objection, may I again point out an additional ground, this was not received from the defendant.

The Court: Objection overruled.

Mr. McDonough: Exception.

(Thereupon Government's Exhibit G-86, previously marked for identification, received in evidence.)

Mr. White: I would like to read a brief excerpt: "Steel concentration. Every club should discuss this in their next meeting, and if they want a speaker call the office or Betty."

Q. Who was Betty?

A. Betty Rosoff. Her true name was Rosofsky.

Q. What was her capacity in the Party?

[fol. 901] A. At that time I am sure she was educational director.

Q. "1—Three basic industries, steel, railroad, and mining. These are basis to the National economy, that is if any one or all three are shut down by strike our economy

is paralyzed. It is necessary for a Marxist revolutionary party to be rooted in these industries."

In the course of your Party activities, did you meet an individual by the name of George Squires?

A: Yes, I did. He was teacher of the Communist Party from New York City. He was a teacher in the Jefferson School.

Q. Where and when did you meet him?

A. He came up here to conduct classes.

Q. Do you recall the occasion when you first met him?

A. Yes, I met him in 1968 Niagara Street.

Q. Whose home was that?

A. Home of Betty Rosoff.

Q. When was that?

A. In the summer of 1948.

Q. Who else was present on the occasion?

A. The defendant, Al Lutski, and probably a dozen more people, members of the class, that attended the class the previous week. This was windup of the class.

Q. Do you recall Noto speaking on the occasion?

A. Yes, he congratulated them on their activity and said [fol. 902] he hoped in future they would become leaders of the Party. He gave each one a piece of Marxist literature.

Q. Was Al Lutski—

A. Yes.

Q. Who was he at the time?

A. He was County Organizer of the Party.

Q. Did Lutski speak?

A. He made an announcement.

Q. What was that?

A. Of the classes to be held in the *new* future.

Q. Did you attend any?

A. Yes, I did.

Q. Where were those classes held?

A. Hamilton Hall.

Q. Who conducted them?

A. A woman from New York City by the name of Elizabeth Lawson. She was also a teacher from the Jefferson School, at least she said she was.

Q. When did these classes take place?

A. September, 1948.

Q. How long did they last?

A. A week. It seems to me Elizabeth Lawson conducted a class for five days, and Albert Lutski following two days. I think Lutski was there a week-end, Saturday and Sunday.

[fol. 903] Q. Does any one of these classes taught by Elizabeth Lawson stick out in your mind?

A. Yes.

Q. Tell us which one.

A. One class I remember very well—

Mr. McDonough: I object unless it appears the defendant was present.

The Court: Objection overruled.

The Witness: In this particular class, I remember her speaking of a class she held in New Rochelle, New York, to raise funds for the Jefferson School. She said a person at this class, they were discussing the Soviet Union, asked her would it be possible for him to own twenty pair of shoes in the Soviet Union. She made the statement he was the kind of a guy they hoped to shoot some day.

Q. You also mentioned Al Lutski taught some of these classes?

A. Yes.

Q. Do you remember any particular classes of his?

A. Yes, we discussed strategy and tactics, I believe Sunday the last day of the class.

[fol. 904] Q. What did he say?

A. Discussing work within the Union's activities of the Communist Party within the Unions, discussing the United Auto Workers. Walter Reuther was mentioned. Al Lutski said Walter Reuther was a social democratic, one of the the members asked Lutski what a social democratic was. Lutski said a social democrat was an evolutionist who waited for socialism where the Communist Party would achieve socialism through revolutions.

(Thereupon document marked Government's Exhibit G-87 for identification.)

Q. I show you Government's Exhibit G-87 for identification, and asked you if you will state what that is?

A. This is "Outline for reporters on the Communist Information Bureau resolution on Tito and other leaders

of the Yugoslav Communist Party. This outline is based upon the report of Comrade Robert Thompson to the state Board."

Q. Where did you get that?

A. C.P. office.

Q. Is that the one on Main Street?

A. 921 Main Street.

Mr. White: The Government offers it in evidence.

Mr. McDonough: Do you intend to read any of this?

Mr. White: Just the title.

[fol. 905] Mr. McDonough: It is impossible for me to read it thoroughly. If you were going to read any of it, I would want to look at it more carefully.

Mr. White: I think I am.

Mr. McDonough: All right.

The Court: Received.

(Thereupon Government's Exhibit G-87, previously marked for identification, received in evidence.)

Mr. White: I would like to read a brief excerpt, Exhibit G-87: "Outline for Reporters on the Communist Information Bureau Resolution on Tito and Other Leaders of the Yugoslav Communist Party. This outline is based upon the report of Comrade Robert Thompson to the State Board."

Page 10, "The Road to Socialism is not an easy one—backslidings and betrayals are inevitable. This is indicated in the history of the CPSU (Trotsky, Bukharin, Rykov, Zinoviev, Piatakov, etc.). Socialism was built in the Soviet [fol. 906] Union through constant struggle against right and left opportunist deviations, nationalists tendencies which degenerated into counter-revolutionary groups.

"What we must see is that the world movement is so powerful that it can detect them in good time before they have broken out in full.

"1. The world Communist movement does not hesitate to call to order any individual, no matter what his position, if he departs from the principles of Leninism.

"2. Moreover, it must be clear that the democratic and socialist movement continues to advance, and in fact, that it is on the eve of new advances both in Europe and in

Asia. It is because it stands on the threshold of new advances and new struggles, that it is necessary to uncover weaknesses and strength the world democratic and socialist [fol. 907] front at all points. That is why this action was necessary and that is why this action will not throw back the movement, but create the conditions for new and greater forward movements in behalf of peace, democracy and socialism.

Issued by: New York State Education Dept. Communist Party, 35 East 12th Street, New York 3, N. Y.

July, 1948."

[fol. 908] Mr. McDonough: May I have an opportunity to read any portion we choose later?

The Court: Yes.

Q. Directing your attention to the 1949, do you recall attending a conference in Rochester in that year?

A. Yes, in the early part of 1949, wintertime, January probably.

Q. Where in Rochester was this?

A. Ukranian Hall in Rochester.

Q. What type of meeting was it?

A. It was on concentration work.

Q. What sections were represented at this conference?

A. Upstate sub-district of the Communist Party, included Buffalo, Rochester, Syracuse, Utica, Binghamton, Southern Tier towns, Elmira—there were people from those towns.

Q. Who presided at this conference?

A. Bill Norman.

Q. Was any other state functionary present?

A. Hal Simon.

Q. Was the defendant present?

A. He was.

Q. Were there any speeches given?

A. Yes, John Noto made the main report, I believe the morning session.

[fol. 909] Q. Will you state the substance of his report as you recollect it?

A. He discussed concentration work, and he said the task of the Party was to build the Party within the shop in Buffalo or concentration, what took place within the

steel and electrical manufacturing, he specifically mentioned both steel and Westinghouse Electric.

Q. Was there another session, was there an afternoon session?

A. Yes, we took a break for lunch. After lunch there were several speakers.

Q. Was there a concluding speaker?

A. Hal Simon.

Q. Do you recall what he spoke about?

A. He discussed strategy and tactics and concentration within the shops, he discussed steel, he said the steel industry was a basic industry, by basic industry he said the entire section of industry within the country depended on steel.

Q. Who was Gert Hessler in the Party in Buffalo?

A. Gert Hessler was County Treasurer of the Communist Party.

Q. Do you recall having a meeting with her early in 1949?

A. Yes, with several other people.

Q. Was the defendant present?

[fol. 910] A. Yes.

Q. What occurred?

A. Mrs. Hessler said due to security measures all receipts, books and records of the Party would be destroyed, that is, records in the hands of the officials.

Q. Were you an official?

A. I was.

Q. Did you destroy your records?

A. I turned my records to the F.B.I.

Q. In 1949, did you attend any Party functions in New York City?

A. Yes, I did.

Q. State approximately when and where these took place?

A. I can't recall the exact date, but I attended a conference at the Hotel Diplomat, New York City.

Q. The early part of the year, when was it?

A. Early part of the year.

Q. What type of meeting was this?

A. It was a meeting on concentration, a conference, probably a thousand people attended.

Q. Hotel Diplomat?

A. Yes.

Q. Who were some of the Party functionaries present?

A. Robert Thompson, Bill Norman, Hal Simon, John Noto, Henry Winston, Norman Ross, about all I can recall, [fol. 911] several Buffalo people besides myself.

Q. Who presided over this conference?

A. Bill Norman.

Q. Did he give a speech?

A. Yes, he spoke on concentration within the shops. That was the theme of the conference. He said concentration of the Party in the shop was a Lenin method of work.

Q. Did John Noto speak at this conference?

A. Yes, he did.

Q. During what portion did he speak?

A. Conference split up into panels, negro panel, community or neighborhood panel and shop panel. John Noto presided over the shop panel.

Q. Were you present?

A. Yes.

Q. Will you state what John Noto spoke about?

A. About concentration in the shop. He said a Lenin method of work within the shop was to decide upon the particular dependent within the shop, that the shop as a rule depended upon, to suspend production, it was the job of every communist to know the people, executives, and product of the company, if possible to direct his attention on the key department, better still, to get a job in the key department.

Q. Were reports made back?

[fol. 912] A. Yes, Chairman of each panel, back to the conference.

Q. Did John Noto so report?

A. Yes.

Q. You mentioned Henry Winston.

A. He was one of the National leaders. He was indicted at the time, 13 members of the Party.

Q. Did he speak?

A. Yes.

Q. Do you have a recollection of what he spoke about?

A. Attacks on the Party and Party leadership, going to jail and going underground.

Q. Did Robert Thompson speak?

A. Robert Thompson summarized; yes.

Q. State to the best of your recollection his summary.

A. He said it was a wonderful conference, he also said that the statement made by Foster and Winston regarding the Communist position on the war between the United States and Soviet Union was a historical statement.

Mr. White: I would like to read a brief excerpt from Government's Exhibit G-37, "Political Affairs", April, 1949.

Mr. McDonough: I have the same objection.

The Court: How does this come in with this [fol. 913] witness?

Mr. White: It relates directly to this last statement the witness testified these leaders of the Party—

The Court: What?

Mr. White: The witness testified as to statements of Party leaders concerning eventuality of a war with Russia.

The Court: This is more or less argument. That is not the purpose of testimony. There was no reference in this meeting to that book, is there?

Mr. White: No.

The Court: You can argue that to the jury, read anything to the jury. This is not the time to argue it.

Q. In the summer of 1949, you recall being present on an occasion at the Rosofsky home?

A. Yes.

Q. When was this, approximately?

A. I think it was August.

Q. Who was present on this occasion?

A. There was a group there. John Noto the defendant was there.

Q. Did discussion develop on this occasion?

[fol. 914] A. Yes.

Q. State what that was.

A. John Noto returned from his vacation. We were discussing vacation. One of the persons at the home said something about, "Well, if I was taking a vacation, I would take it in Alaska." John Noto "Some day I will probably take a vacation there and Alaska will belong to the Soviet Union."

Q. Do you know a man by the name of Phil Muchow?

A. Yes.

Q. Who was he?

A. He came from New York City. He had jobs in various shops in an effort to build the Party around Buffalo.

Q. Where did you meet him?

A. At the Rosofsky home, 916 Niagara Street.

Q. Was or was not John Noto present on that occasion?

A. He was, yes.

Q. State what was said on that occasion?

Mr. McDonough: When was this? Are we still talking about the meeting in August, 1949?

Mr. White: I believe the witness testified to a later meeting.

Mr. McDonough: I did not get it.

The Witness: It was in September.

Q. At the Rosofsky home?

[fol. 915] A. Yes.

Q. Was Al Luski there?

A. Yes.

Q. State what John Noto spoke about on this occasion.

A. He spoke about building a railroad club of the Communist Party, there was a railroad employee at this meeting who was a cook on the Lackawanna Railroad.

Q. Who was that?

A. His first name was Bill, I can't remember his last name, a negro.

Q. What happened?

A. They laid plans for building a Communist Party club, on the railroad, which would include dining car employees of the railroad.

Q. Directing your attention to the year 1950, did you attend Communist Party meetings that year?

A. Yes.

Q. Do you recall attending a meeting at Hamilton Hall?

A. Yes, I do, very well.

Q. When was that?

A. January or February, 1950.

Q. What type of meeting was this?

A. Upstate conference, Upstate District of the Communist Party and of New York.

Q. What areas of the Party were represented?

[fol. 916] A. Rochester, Binghamton, Syracuse, towns I have mentioned.

Q. Who presided over this meeting?

A. John Noto.

Q. What was the subject of the talk?

A. War in Korea.

Q. What did he say about the war in Korea?

A. He said the war in Korea was caused by an aggressive action of the United States, American troops would follow Wall Street policy. He said it is possible for this to break out in other parts of the world. He mentioned the near East.

Q. Is that all?

A. Yes.

Q. Directing your attention to 1951, did you attend Communist Party functions or meetings in that year?

A. Yes, I did.

Q. Do you recall attending a meeting at the Lumpkin home?

A. Yes, it was an Upstate Committee meeting.

Q. What part of the year was that?

A. That was probably January or February, 1950.

The Court: What year?

The Witness: 1951.

Q. What sections of the Party were represented at this meeting?

A. Leadership of the Party in the Upstate area, people [fol. 917] from Rochester, Syracuse, and so on.

Q. Who presided at this meeting?

A. John Noto.

Q. Do you recall what he spoke about?

A. He spoke about Party building and security within the Party. He said it was about time the Communist Party gave the Party back to the clubs and members, he severely criticized leaders of the State and County. He said the group system installed in 1948 was unnecessary. He said that the Communist Party could go back to the club system as two members could make a club.

Q. Do you recall any other subject matter he spoke about?

A. He quoted Marx and Lenin.

Q. Did he mention anything about a "United Front"?

A. Yes, he mentioned "United Front", he talked about the "United Front". He said it was the duty of every members to become a part of and a member of outside organizations, even if it was church, any organization, union, after establishing himself in the organization to take part in the leadership of this organization.

Q. Did you attend any meetings at the defendant's, John Noto's home in 1951?

A. Yes, several.

[fol. 918] Q. Where was he living at that time?

A. Cold Spring section. I think it was 312 Purdy Street.

Q. Do any of these occasions stand out in your mind particularly?

A. One of these occasions, the time these classes were held during the Rosenberg trial, he stated the Rosenberg case was a planned affair—

The Court: What time?

Q. What time of the year was it?

A. Probably late summer of 1951, in the summer of 1951, May to July, there were several meetings.

Q. The Rosenberg, what was said about that?

A. He said the Rosenberg case was a planned affair.

Q. Do you recall another occasion in the same period at Noto's home, do you recall any other occasion in the same general period of time?

A. Yes, one meeting was held there, John Noto just came home from a trip in other parts of the state. He came from Rochester, carried a bundle of literature and sold some to us at the meeting.

Q. What was that literature?

A. "Lasting Peace", I recall I purchased one or two copies of it.

Q. Had you ever bought any other copies of "Lasting Peace" from John Noto?

[fol. 919] A. Yes.

(Thereupon documents marked Government's Exhibits G-88 through G-91 for identification.)

Q. I show you Government's Exhibits G-90 and G-91, and I ask you if you can state what those are and where you received them?

A. These are copies of "To a Lasting Peace for People's Democracy". I purchased them from John Noto at his home.

Q. What is the date that appears thereon?

A. May 1, 1954.

Q. I show you also Government's Exhibits 88 and 89, and ask you if you can tell me what those are?

A. Two copies "For a Lasting Peace for a People's Democracy".

Q. Where did you obtain those?

A. Purchased From Communist Party Headquarters February 27, 1950 and March 12, 1950.

Mr. White: The Government will offer these.

The Court: Do you have any reference to any particular article in there?

Mr. White: I don't know.

The Court: Then I don't suppose the defendant has time to examine them at this time?

[fol. 920] Mr. McDonough: I don't intend to now. I just was to identify them.

The Court: G-88 to G-91 received in evidence. We will adjourn until Monday morning at 10 o'clock.

(Thereupon Government's Exhibits G-88 to 91, previously marked for identification, received in evidence.)

(Whereupon an adjournment was taken to April 9th, 1956, at 10 o'clock A.M.)

[fol. 921] PROCEEDINGS OF APRIL 9th, 1956, at 10 o'clock A.M.

APPEARANCES: Same as before noted.

CHARLES REGAN, resumed the stand and testified further as follows:

Direct examination (resumed)

By Mr. White:

Q. When we recessed Friday, you had identified Exhibits which had been introduced into evidence of certain copies of the "Lasting Peace for People's Democracy". Do you recall that?

A. Yes, I do.

Q. At this time I would like to show you certain exhibits already introduced in evidence, G-50, G-51, G-53, G-55, G-60, G-61 and G-62, and ask you if you can identify those?

A. First copy I purchased 3/17/48.

Q. Where did you purchase that?

A. Communist Party Headquarters, 921 Main Street.

Q. What is that exhibit?

A. Exhibit 50—Exhibit 51 I purchased in Communist Headquarters 9/20/48. Exhibit 53 I purchased in Communist Party Headquarters 8/8/49. Exhibit G-55, I purchased in Communist Party Headquarters 10/10/49. [fol. 922] Exhibit G-60, purchased in Communist Party Headquarters 1/3/50. Exhibit G-61, I purchased in Communist Party Headquarters 1/9/50. Exhibit G-62, purchased in Communist Party Headquarters 1/9/50. These are all copies of—

Q. "For a Lasting Peace in People's Democracy."

Mr. White: I would like to read brief excerpts from a few of these exhibits. From Government's Exhibit G-88, "For a Lasting Peace in People's Democracy" Friday, February 10, 1950, Page 3, an article entitled "Lenin, Stalin-Banner of the 20th Century," by Eugene Dennis, General Secretary, Communist Party, U.S.A.

Exhibit G-89, "For a Lasting Peace" February 24th, 1950, reading on page 1: "The Great October Revolution, having liberated the peoples of Russia and having abolished exploitation forever, ushered in an epoch of socialist democracy.

"In bourgeois society where there are rich and poor, exploiters and exploited, there can be no real democracy.

[fol. 923] Bourgeois democracy the mendacious, false and restricted democracy supports capital by all means, securing its dominations and omnipotence. Were it not for the struggle of the working class, bourgeois democracy would have made all the people slaves of capital, devoid of all rights. The great October Revolution, for the purpose of liberating the working people, shattered the bourgeois state machine and replaced it with the new Soviet socialist state. Since then under traditions of the general crisis of capitalism, the historical restrictions of bourgeois democracy and its organic ills have manifested themselves evermore sharply."

Dropping down to the last paragraph: "The working class and Communist Parties know that the liberation of mankind from the yoke of capitalism is possible only by [fol. 924] way of socialist democracy. The example of the Soviet Union and of the people's democracies in Europe and Asia is the guiding star for the entire International proletarian movement."

Reading from Exhibit G-90, "For a Lasting Peace," Friday, March 23, 1951, an article on the first page, first column:

"Party meetings in the capitalist countries, particularly where terror and persecution of Communists are rife, encounter serious barriers. Communists must be most vigilant and be able to frustrate in good time the police-fascist provocations, prevent the infiltration of agents-provocateurs and spies into their ranks. In these conditions, the timely holding and careful preparation of meetings, which ensure militant training of cadres and closer contact between the Party and the masses are of special significance. For [fol. 925] this reason Communist Parties in the Capitalist countries devote close attention to the question of Party meetings."

Government's Exhibit G-91, "For a Lasting Peace," Friday, March 30, 1951, page 3, and article by John Williamson, National Labor Secretary of the Communist Party, entitled "Struggle of working people in U.S. against Emergency Decree."

(Thereupon document marked Government's Exhibit G-92 for identification.)

Q. I show you what has been marked Government's Exhibit G-92 for identification, and ask you if you can tell me what that is.

A. "The Dictatorship of People's Democracy" by Mao Tse Tung, Chairman of the Central Committee of the Communist Party of China.

Q. Where did you obtain that?

A. Communist Party office, 10/10/49.

OFFERS IN EVIDENCE

Mr. White: The Government offers this in evidence.

(Thereupon Government's Exhibit G-92, previously marked for identification received in evidence.)

[fol. 926] Mr. White: I would like to read the title page of this Government's Exhibit G-92. "The Dictatorship of People's Democracy" by Mao Tse Tung, Chairman Central Committee Communist Party, China. Issued by: New York State Committee, Communist Party, Education Department, 35 East 12th Street, New York City, September, 1949.

Page 2, "This article, transmitted by the Sinwa Agency, was written by Mao Tse Tung for the 28th Anniversary, July 1, 1949, of the Communist Party of China."

The end of the whole article I would like to read, your Honor. May I read it? On the last page "Reprinted from: For a Lasting Peace, for a People's Democracy, No. 14, July 15, 1949."

Q. Did the Communist Party have a newspaper in the Upstate area?

A. "UpState Worker", "Sunday Worker" and "Communist Daily Worker":

Q. Did you receive copies of that?

[fol. 927] A. Yes.

Mr. White: Mark this.

(Thereupon document marked Government's Exhibit G-93 for identification.)

Q. I show you what has been marked Government's Exhibit G-93, and ask you if you can tell me what that is?

A. Article in the "UpState Worker", Upstate New York.

Q. Who wrote that article?

A. John Noto, Chairman of the Communist Party of Western New York.

Mr. McDonough: I don't want to delay the Court and jury in stating this now. Will it be understood over the noon recess I will have an opportunity to read through this entire edition, with that understanding I have no objection to the photostat of the one article.

The Court: Very well.

Mr. McDonough: As long as I have an opportunity to study the whole issue, and offer such part as I wish.

The Court: Very well.

Mr. White: The Government offers Government's Exhibit G-93.

[fol. 928] Mr. McDonough: With the understanding of my original objection.

The Court: Yes.

(Thereupon Government's Exhibit G-93, previously marked for identification, received in evidence.)

Q. Did there come a time in 1951, when the defendant visited you?

A. Yes, he did, in my home.

Q. Where were you living at that time?

A. 45 Ferguson.

Q. Can you recall approximately when in the year it was?

A. In the summer, probably August.

Mr. McDonough: Which year is that?

The Court: 1951.

Q. Was anyone else present?

A. Yes, there was.

Q. Who was there?

A. Members of the County Leadership of the Communist Party.

Q. Specifically who were they?

A. Hattie Lumpkin, Joseph Green and Johnny Ellis.

Q. State what occurred on this occasion.

Mr. McDonough: Was Noto there?

Q. Was the defendant there?

[fol. 929] A. John Noto was there, yes, four of them holding a meeting in the living room of my home.

Q. Were you present at the meeting?

A. No, I did not attend the meeting.

Q. What else occurred?

A. He asked me to walk out in front of the house and check the street to see whether there were any strange cars or people in the vicinity, and generally to keep a look-out around the house of anyone who should not be there.

Q. When was the next occasion you saw John Noto?

A. Shortly after that, probably September.

Q. Where was that?

A. My home.

Q. Was anyone else present?

A. He came to my home with Milton Kaplan.

Q. Who was he?

A. He was one of the top Communists in this area, at the time employed by Westinghouse Electric.

Q. Did a meeting of some kind take place?

A. Yes, there was quite a discussion at my home until one o'clock in the morning.

Q. Were you present?

A. Yes.

Q. What was that about?

[fol. 930] A. Defendant said he was growing a mustache and had his hair cut short, crew cut style, said he was going under a disguise to conceal himself.

Q. Did he ask you to do anything on this occasion?

A. To check the neighborhood, later on in the evening his wife came to my place, asked if they could stay there that night, which they did.

Q. Do you have a recollection of another occasion on which you saw John Noto in the fall of 1951?

A. Yes, in the same month.

Q. Where was that?

A. In my home.

Q. Tell us what happened and who was present.

A. He came to the house and held a meeting with John Noto, there was Joseph Green, and Russell De Pasquale.

Q. Did they hold a meeting?

A. They did.

Q. Were you present?

A. I did not attend the meeting. I was in an adjoining room. I could overhear part of what was said.

Q. State what you heard?

A. I could hear De Pasquale very well. He talked loud. They were trying to get De Pasquale to be active in the Party.

Mr. McDonough: If the Court, please, I have not [fol. 931] objected to what De Pasquale said——

The Court: I sustain the objection.

Mr. McDonough: I move to strike it out.

The Court: Strike it out.

Q. Can you tell us what you heard De Pasquale say?

A. He said he could not work in the Communist Party with Johnny Ellis.

Q. Did anyone answer that?

A. Yes, the defendant John Noto said anything Johnny Ellis said or did was Communist Party policy, that he would stand behind Johnny Ellis' actions. I overheard that.

Q. What is your recollection as to the last occasion on which you saw the defendant John Noto?

A. It was in the fall of 1951, sometime later than this meeting, probably October.

Q. Where did this take place?

A. My home.

Q. Was anyone else present?

A. No, John Noto came to my home to pick up a package left there by his wife.

Q. What was in the package?

A. It was a brown paper bag which contained "Daily Workers" and a magazine.

Q. Did you have a conversation?

A. Yes, he said he was exhausted. He had been doing a [fol. 932] lot of traveling all over Upstate New York, he had to be on the move.

Q. Did he look any differently?

A. Yes, his hair was longer, and his mustache was much heavier.

Q. To your knowledge what position in the Communist Party did John Noto hold at that time?

A. To the best of my knowledge——

Mr. McDonough: I object to the best of his knowledge.

The Court: I sustain the objection, unless he shows the source of his knowledge.

Q. How long did you remain in the Communist Party?

A. Until 1953.

Q. Did you leave voluntarily?

A. No, I was expelled.

Mr. McDonough: I object, immaterial.

The Court: Objection overruled.

Mr. McDonough: Exception.

Q. You were expelled?

A. Yes.

Q. Did you have a hearing of any kind?

A. No.

Q. Did you ask for a hearing?

Mr. McDonough: I object to it, immaterial.

[fol. 933] The Court: I sustain the objection.

Mr. McDonough: I ask to strike it out.

The Court: Strike it out.

Mr. McDonough: My objection goes to both, whether he had a hearing or whether he asked.

The Court. I sustain the objection as to both.

Q. During your membership in the Communist Party, did you receive compensation from the Government?

A. Yes, I did.

Q. Can you give an estimate as to the—how many years were you in the Communist Party?

A. Ten years, approximately.

Q. Can you give an estimate of how much money you received from the Government during that period?

A. Approximately \$10,000.

Q. Prior to your testifying in court Friday, did you have any conferences with me?

A. Yes, possibly seven or eight.

Q. What was the duration of these conferences?

A. A couple of hours.

Q. What did we talk about?

Mr. McDonough: I object to what they talked about.

The Court: I will receive it only in a very general way, not in detail.

Mr. McDonough: All over my objection.

[fol. 934] Q. State in a general way the subject matter we discussed.

A. You asked me numerous questions about my activities in the Communist Party.

Q. Did I ever show you any report you had submitted?

A. No, none.

Mr. White: You may examine.

Cross-examination.

By Mr. McDonough:

Q. With reference to the reports which you submitted, I take it during all these years you did submit some reports to the Government?

A. I did.

Q. When did you start submitting them?

A. 1943.

Q. How often would you submit them?

A. At every opportunity, whenever I attended any sort of function with any Communist Party member.

Q. How many a week?

A. It varied.

Q. Can you give us any estimate?

A. No, I can guess, some weeks five or six, some weeks it would be one.

Q. There were weeks you sent in reports almost every day?

[fol. 935] A. Yes.

Q. Were they lengthy?

A. Some were short. I was informed two lines was all that was necessary.

Q. How many pages would you say the longest report was?

A. On the State Convention in 1945.

Q. How many pages was it?

A. 12 to 15.

Q. I presume over the years you have turned in numerous reports, at least approaching that in length?

A. Not that long.

Q. You turned in many reports of numerous pages?

A. Yes.

Q. Anywhere from two to larger pages?

A. From one up.

Q. Were they written or typed?

A. Handwritten.

Q. By you?

A. Yes.

Q. Do I understand you have never signed any of these reports?

A. Never signed any of these reports.

Q. From 1943, 13 years ago, you started sending in the reports, you have never seen any of them since?

A. None.

[fol. 936] Q. Did you testify before the Grand Jury in this case?

A. I did.

Q. How long ago?

A. A year ago.

Q. Before your Grand Jury testimony were you given an opportunity of studying any of these reports?

A. No.

Q. Did not see any of them then?

A. No.

Q. There isn't a single one of your reports turned in, in the period of over ten years, from the time you sent them until today?

A. That is right.

Q. When you conferred with Mr. White of the United States Attorney's staff, in the last few days, were you given anything to look over?

A. No.

Q. Nothing at all. Did Mr. White read certain documents to you?

A. Yes, he had documents. I don't know what they were, were typewritten.

Q. Did he read from them?

A. No, he asked questions from them. He read them and asked me questions.

Q. I noticed the other day he was questioning you concerning a rather voluminous document, was that the outline of your testimony?

A. I believe so, I am not sure.

Q. Your recollection has been refreshed by some means or other.

A. By questions and exhibits.

Q. You have seen or read nothing yourself in preparation for your testimony here?

A. I have not see my reports.

Q. Your testimony given here is based upon your unaided memory of these events concerning which you testified?

A. Not exactly.

Q. You say not exactly?

A. Not exactly. Góvernment's Exhibits and questions asked help improvise and build my memory up.

Q. Improvise?

A. No, I won't say improvise. I say build my memory up.

Q. You did build your memory up?

A. That is right.

Q. Did you feel your memory needed building up when you got ready to testify in this case?

A. Well, certain occasions I knew exactly.

Q. That was not my question. Did you feel your memory needed building up, "Yes" or "No"?

A. Yes.

[fol. 938] Q. Being a human being I presume you admit there is a possibility your memory may have been inaccurate or in error as to certain things?

A. Yes.

Q. Let us get to the start of your activity in the Communist Party. You joined in 1943?

A. Yes, sir.

Q. Was that at anyone's request or suggestion?

A. Yes.

Q. Whose suggestion?

A. A person came to my home and asked me.

Q. Who was that person?

Mr. White: I object to this, immaterial, further it may tend to disclose the investigative technique of the Federal Bureau of Investigation.

The Court: Was that person connected with the Federal Bureau of Investigation?

The Witness: This person was connected with the Government.

The Court: I sustain the objection. He did not state his connection.

Q. Where were you born?

A. Canada.

Q. When did you come to this country?

[fol. 939] A. A good many years ago.

Q. How many years ago?

A. In the 20's.

Q. It is reasonable to assume about 30 years ago?

A. Yes.

Q. Did you apply for citizenship?

A. Not at the time.

Q. Did you later?

A. Yes.

Q. Are you a citizen?

A. Yes.

Q. When did you become a citizen?

A. May, 1951.

Q. When did you first apply for citizenship?

A. Previous to my—early 40's.

Q. When in the 40's?

A. 1942, 1941 or 1942.

Q. I presume, did you apply in Buffalo?

A. Yes.

Q. Was it before or after you started to join the Party you applied for United States citizenship?

A. After.

Q. Which came first?

A. I applied for citizenship after I joined the Party.

Q. You joined the Communist Party first and then applied for citizenship?

A. Yes.

Q. It must have been in 1943?

A. I did not apply for citizenship in 1943. It was later.

Q. It was not 1941 or 1942 you applied for citizenship?

A. I believe it was 1941 or 1942, but the direct application, when I went for my hearing was after 1943.

Q. When you applied in 1941 or 1942, didn't you have a hearing shortly after that?

A. No, I did not have a hearing until 1951, I believe.

Q. It took you ten years to get a hearing?

A. Yes.

Q. What was the reason for the delay?

A. I don't know, unless it was my affiliation with the Communist Party.

Q. You did not disclose that in your dealings with the immigration people?

A. I did not. I believe they knew, though.

Q. Did you feel your undercover work in the Communist Party would help you in your application for citizenship?

A. I thought so.

Q. You were admitted to citizenship in 1951?

A. 1951.

Q. You were still a member of the Communist Party then?

[fol. 941] A. That is right.

Q. Did you disclose to anybody you were a member of the Communist Party at the time you were sworn in as a citizen?

A. Yes.

Q. To whom did you disclose it?

A. Person in immigration, I don't recall his name.

Q. Didn't you have to swear to certain things in connection with your application for citizenship?

A. Yes.

Q. Didn't you have to swear to a statement you were not a member of any organization which had for its purpose overthrow of the United States Government by force and violence?

A. Yes.

Q. Did you swear to that?

A. Yes.

Q. When did you swear to that?

A. In 1951.

Q. You were actually a member of the Party until 1953?

A. 1953.

Q. Getting back to 1943, other than your reports to the Government, did you make any personal notes which might help us today to recollect the events?

A. No, I have not.

[fol. 942] Q. You have no notes or memorandum?

A. I had them up until a few years ago. I was instructed to destroy them.

Q. You were instructed to destroy your notes?

A. Yes.

Q. You knew you were getting evidence for the Government?

A. That is right.

Q. You hoped some day you would be able to come to court in connection with your undercover work?

A. No, sir, I did not have any hope.

Q. You knew you may?

A. At that time I did not know I might.

Q. You want to tell us all the time you were doing undercover work you did not know at some time you might be called to court to testify?

A. No, I did not, until this attack on the Communist Party started in 1948.

Q. Had you destroyed your notes before that or after that?

A. 1948.

Q. You destroyed your notes?

A. Yes, sir.

Q. You say you were instructed by the Government to destroy those notes?

A. My personal notes?

[fol. 943] A. Yes.

A. Yes.

Q. By the United States Government?

A. That is right.

Q. The United States Government knew they might use you as a witness later?

A. Yes.

Q. They told you to destroy your notes?

A. That is right.

Q. Those notes might be helpful to us in court as an aid to your recollection of events 13 years ago?

A. They would, but the reason I was told to destroy them was for security reasons, membership of the Communist Party, which being O.K'd by the Communist Party itself.

Q. It would have been easy to turn the notes over to the Government itself?

A. Yes.

Q. Nobody was going to take them out of the Government's safe?

A. No.

Q. Yet they told you to destroy them, not to turn them over to them?

A. That is right.

Q. You say you received \$10,000.00 for your undercover [fols. 944-987] work. Have you also received expense money?

A. That includes expense money.

Q. You are giving us a round figure?

A. That is right.

[fol. 988] JEROME J. FINK, called as a witness by and in behalf of the Government; having been first duly sworn; testified as follows:

Direct examination.

By Mr. Henderson:

Q. Mr. Fink, will you speak up so we can all hear you, at least as far as I am. What is your business?

A. I am a psychiatric social worker in the State Hospital.

Q. What point?

A. Graystone Park, New Jersey.

Q. Do you know the defendant, John Noto in this case?

A. I do.

Q. If he is in the court room will you indicate by pointing him out?

A. There he is (indicating).

Q. When and where did you first meet the man you point out as John Noto?

[fol. 989] A. I have an apartment house. In the apartment house I have six apartments. One day, I believe in June, 1954, I rented an apartment to a man and he told me his name was Louis Peresi. I recall at that time very well I asked him if he was a relative—

Q. Just a minute. This man, Louis Peresi, was he with a woman at the time he rented the apartment?

A. I don't recall whether he was with the woman at that particular time.

Q. Did there come a time you met Mrs. Peresi?

A. Yes, I did.

Q. You rented an apartment to this couple?

A. That is right, we did at that time.

Q. Is the man you pointed out in this court room as John Noto the same man who called himself Mr. Peresi?

A. He is.

Q. He called his wife Mrs. Peresi?

A. That is right.

Q. Did you have any conversation with this man prior to the time that you rented the apartment to him?

Mr. McDonough: I object to this, if the Court please, on the ground it is incompetent, irrelevant and immaterial.

The Court: Objection overruled.

Mr. McDonough: My objection is particularly pertinent [fol. 990] in view of the nature of the offense charged, all the circumstances surrounding the investigation of the Communist Party, and so forth, I submit it is immaterial.

The Court: Objection overruled.

Mr. McDonough: Exception.

Q. Did you have any conversation with him as to from whence he came at the time, or his business?

A. He told me he was living at another place in Newark and having difficulty with the landlady, and was looking for another apartment. Also he told me he was working for the Goodyear Rubber Company in downtown Newark.

Q. How long did he stay with you as tenant?

A. Approximately one year.

Q. Did he ever reveal his true identity, that is, John Noto?

A. No, he did not.

Mr. McDonough: I object as immaterial.

The Court: Objection overruled.

Q. Did there come a time he left your premises?

A. He did.

Q. Did he state anything to you about where he was going and the reason for his leaving?

[fol. 991] A. He said he was going to California to help out his wife's father who was in the building business, was ill and could use help, and I asked him, I recall, what kind

of work he was going to do. He said he was going to be a carpenter and learn the trade.

Q. The name he used was spelled P-e-r-e-s-i?

A. That is right.

Q. What first name did he use?

A. As I recall it was Louis Peresi.

Q. Do you know whether or not he was working days or nights during the time of his occupancy of your premises?

A. I have no definite proof, but my impression was he worked days.

Mr. Henderson: You may ask.

Cross-examination.

Mr. McDonough:

Q. You live in Newark?

A. Yes.

Q. You own this apartment house?

A. That is correct.

Q. When did the Government first approach you with reference to being a witness in this case?

A. I believe it was some time in the fall of last year.

Q. 1955?

[fol. 992] A. That is right.

Q. Was that the first you knew anything about the actual identity of the man to whom you had rented the apartment?

A. I would rather answer your question by stating I was shown a photograph and was asked if I knew the man. I said it was Louis Peresi.

Q. You say this man rented your apartment in June, 1954?

A. Yes.

Q. This was one of how many apartments?

A. One of six.

Q. You said he had his wife and daughter with him?

A. That is correct.

Q. Have you seen them since here?

A. My impression is, if I am not mistaken, that is his wife with the white feather in the hat.

Q. How old was the little girl?

A. My impression, she would be between four and six.

Q. Were they good tenants while they were there?

A. I had no complaints about that.

Q. He was working regularly somewhere?

A. That would be my impression.

Q. Do you live on the premises?

A. No, I don't.

Q. You would have no personal knowledge of his coming [fol. 993] and going?

A. I have no personal knowledge.

Q. He said he worked in the Goodyear Company in Newark?

A. That is right.

Q. You don't know anything about his social activities during the time he was there?

A. No, I don't.

Q. Did he sign a lease?

A. No lease was signed.

Q. Just on a month-to-month basis?

A. That is correct.

Q. To whom was the rent paid?

A. Paid to me.

Q. Did you give receipts for it?

A. I did not give any receipts.

Q. You did not give any receipts?

A. No.

Q. Why not?

A. He did not ask for them. He trusted me and I trusted him.

Q. Don't you usually give receipts?

A. No.

Q. Charging over the ceiling?

A. No, I am not and I resent that inference.

Q. Did he pay by check?

[fol. 994] A. No, by cash.

Q. Did you give the other tenants receipts?

A. No.

Q. Don't any of them ask for it?

A. No, they don't.

Q. He was there about a year?

A. That is correct.

Q. Do you remember what month it was they left?

A. I would say it was July. I would like to add to that.

he told me, I don't know the exact date he was leaving, that he was—I asked him if he would call by phone, or if I could call him. He said no, he was having the telephone disconnected but would leave the key in the hallway, which he did.

Q. They left some time in July, 1954?

A. 1955.

Q. Came in June, 1954?

A. That is correct.

Redirect examination.

By Mr. Henderson:

Q. Did he have a telephone?

A. He did.

Q. Under what name?

A. I believe—

[fol. 995] Mr. McDonough: I object to what he believes I think we should have the witness' knowledge.

The Court: I sustain the objection.

Q. Did you ever call?

A. Yes.

Q. What number did you call and name?

A. It was listed under Peresi, but I believe it began with Talmadge.

Q. You are not charging any illegal rent?

A. And I resent that very much.

Mr. Henderson: You have said that.

Recross-examination.

By Mr. McDonough:

Q. Do you resent if someone asks you whether you give receipts?

A. No, I don't resent being asked whether or not I give receipts, but resent the inference.

Q. How long have you been an owner of real estate?

A. Roughly eight years.

Q. How many apartment houses do you own?

A. Two.

Q. How long have you owned them?

A. One eight years and roughly one five years.

Q. During that period of eight and five years have you ever given a receipt to a tenant?

[fol. 996] A. Yes, I have.

Q. Never in this apartment. You have never given a single receipt to a tenant who was in that building?

A. One reason was I lived in it for a time.

Q. Is that why you did not give a receipt?

A. Tenants knew I was there. I would not run away with the money I would assume that.

Q. How about the other building, did you give receipts in the other buildings?

A. No, I did not.

Mr. McDonough: That is all.

Mr. Henderson: That is all.

ROBERT GREENBERG, called as a witness by and in behalf of the Government, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Henderson:

Q. Where do you live, Mr. Greenberg?

A. Niagara Falls, New York.

Q. What is your present employment?

A. I work for the Property Development Corporation in Niagara Falls.

Q. Were you formerly a member of the Communist Party [fol. 997] of America?

A. Yes, I was.

Q. Have you ever been a Government agent or employee of the Government?

A. No.

Q. When and where and under what circumstances did you become a member of the Communist Party?

A. I joined the Party in the Spring of 1947 in Niagara Falls.

Q. Who recruited you, if you recall?

A. A party by the name of Weisman.

Q. Man or woman?

A. A woman.

Q. Did you get a card as a member of the organization at that time?

A. Not at that time. I received it in November—in September of that year.

Q. Did there come a time when you ceased being a member of the Communist Party, and if so, what were the circumstances of your dropping membership?

Mr. McDonough: I object to the circumstances.

The Court: The details may be prejudicial.

Q. On the general detail, without specifying anything beyond the manner in which you left and the reason you left?

[fol. 998] Mr. McDonough: I object, if the Court please.

The Court: He can say whether he left voluntarily.

The Witness: I decided to drop out of the Party in the latter part of 1951.

Q. Subsequent to that did you come to the F.B.I and make a statement with respect to your membership.

Mr. McDonough: I object.

The Court: Objection overruled.

The Witness: Yes, I did.

Q. You stated you took membership in Niagara Falls, New York, in the spring of 1947. What were you then doing, the last occupation?

A. I was going to school.

Q. Did you take a job?

A. I went back to sea, I had been in the Merchant Marines for a number of years previously.

Q. During that period of your going back to sea, you received your card?

A. Yes.

Q. Where did you receive it?

A. In New York City.

Q. As a Communist Party member did there come a time when you participated in some program involving the Party or some activity of the Party?

[fol. 999] A. I was active in the waterfront section of the Party quite awhile from 1947 until 1948 in Texas.

Q. What is this waterfront section of the Communist Party?

A. That was a section comprised of waterfront workers.

Q. In what capacity did you function in this waterfront section?

A. I was organizer in the section in Galveston and Port Arthur.

Q. What was your chief function in Galveston as a Party member?

A. At the time there was an election in the Union of Communist supported—

Mr. McDonough: I object to his activities in Galveston as not binding on this defendant.

The Court: Objection overruled.

The Witness: During that period there was an election of the National Maritime Union of a Communist supported slate of officers entitled "Communist Slate", in which the Party's job was to get support and raise money for the Communist supported slate in the Union.

[fol. 1000] Q. I am sorry, I have to ask you to stand with the Court's permission.

A. I will try to talk louder.

Q. You just stated there was a waterfront section of the Communist Party in Galveston, and there was an election of the National Maritime Union?

A. Yes.

Q. There were two slates, one supported by the Communists and one by non-Communists?

A. Yes.

Q. Who was candidate for president on the Communist slate?

Mr. McDonough: This is all over my objection.

The Court: So recognized.

The Witness: His name is Frederick Meyers.

Q. Did he have another name?

A. Known as "Blacky" Meyers.

Q. He was a Communist, was he?

A. Yes.

Q. You were an organizer on their behalf?

A. Yes.

Q. What was the result of that election, who won the election?

A. The anti-Communist force won the election.

Q. At that time did you have occasion to meet a Com-[fol. 1001] munist organizer named Jack Greene, and, if so where?

A. He was Texas State Chairman of the Communist Party. I met him on a number of occasions with relation to activities in the Galveston area.

Q. Did you receive anything from him in the way of Party help or literature instructions?

A. I received literature and also Party directives were directed through him.

Q. Following the loss of that election, what did you next do?

A. I returned to Niagara Falls, took a job as organizer for the "Wallace for President Committee".

Q. State what year that was?

A. September, 1948.

Q. What party was backing Wallace for President in 1948?

A. The American Labor Party.

Q. You took a job as Executive Secretary for this Wallace for President Committee?

A. That is right.

Q. In the course of these duties on behalf of Wallace, did you meet the defendant, John Noto?

A. On a number of occasions.

Q. You know the defendant, John Noto?

A. Yes.

Q. Do you see him in the court room?

[fol. 1002] A. Yes.

Q. Will you point him out, please?

A. (Indicating).

Q. State what was said between you and Noto the first time you met him during the Wallace campaign.

Mr. McDonough: I object unless the time and place is indicated.

Q. Fix the time.

A. It was on a number of occasions during the period September, October and November, 1948.

The Court: He asked the first occasion?

The Witness: It would have been September, 1948. It would have been in Buffalo at the Party Headquarters on Main Street.

Q. What was said by you what did you say to Noto concerning the Party activities?

A. We discussed the problem of activity, Party membership in Niagara Fall, and also problems of conducting the election campaign in progress at that time.

Q. In 1948, will you please state what job Noto had with the Party?

A. He was Chairman of the sub-district of Western New York.

Q. Was there some activity on behalf of the defendant [fol. 1003] for the Wallace for President Campaign, and, if so, did you meet him and discuss anything concerning that campaign?

A. It would have been primarily a discussion of Party activities in conjunction with it.

Q. Would you say that the Communist Party was backing the candidate Wallace?

A. Yes.

Q. Wallace was eventually defeated?

A. Yes.

Q. During that campaign and afterward did you have an occasion to meet with Noto and discuss any Party activities with him?

A. It would have been in approximately the middle of October, I would guess of that year, discussed starting an educational program in the Party group in Niagara Falls to stimulate interest, and during that period we got different types of literature and publications from Noto.

Q. During this period did you visit Communist Party Headquarters on Main Street.

A. Yes.

Q. Was John Noto there?

A. Yes.

Q. Did he point out to you what the literature was that [fol. 1004] was available?

A. It was pretty well open, the literature that was available.

Q. Did you buy some of it?

A. Yes.

Q. Whom did you pay for it?

A. John Noto.

The Court: Show him all of them. Have him pick the ones he got there and list the numbers of the exhibits.

Q. I show you a number of books there, will you look them over and tell the Court and jury whether or not all of these books were present in the Party Headquarters at the time you visited with Noto up there?

A. I would assume all of them—

The Court: He wants you to look at them.

A. All but possibly this one.

Mr. Henderson: "Proletarian Revolution and Renegade"

The Court: Have you looked at the rest of them?

The Witness: Yes.

Q. The witness identified Exhibits 8, 13, 14, 15, 16, 17, 18 and 20. I show you Government's Exhibit 52, a copy of "For a Lasting Peace and People's Democracy", will you state whether or not you saw that periodical in Communist Party Headquarters at 921 Main Street, and if so, when?

A. I received copies of that regularly in that period.

Q. From whom?

A. From Noto.

Q. I show you Government's Exhibit G-73, ten classics by Marx, and ask you if you received that?

A. We purchased a number of those copies for members of the Niagara Falls group.

Q. From whom did you purchase them?

A. John Noto.

Q. These ten classics contained in this book, Exhibit 73, have as part of their contents teachings of Carl Marx, by V. I. Lenin, Socialism or Utopia and Scientific by Frederick Engels, Dialectical by Joseph Stalin, and Historical Imperialism by Joseph Stalin?

A. Yes.

Q. Value, Price & Profit by Carl Marx?

A. Yes.

Q. Wage & Labor by Carl Marx?

A. Yes.

Q. The Communist Manifesto?

A. Yes.

Q. Imperialism, The Highest State of Capitalism, V. I. Lenin?

A. Yes.

[fol. 1006] Q. State and Revolution by V. I. Lenin?

A. Yes.

Q. Foundations of Leninism by Joseph Stalin?

A. Yes.

Q. Left Wing Communism and Infantile Disorder, is that correct?

A. Yes.

Q. That is a compilation of those classics?

A. Yes.

Q. These books were bought by you at the request of Noto for reviving interest in Niagara Falls in the Party, you bought them from him?

A. Yes.

Q. You described that Wallace election of 1948, during that time did you have any conversation with the defendant Noto about your future in the Communist Party?

A. During the latter part of October, 1948, he proposed to me the possibility of my taking a job of organizer in Erie County after the election.

Q. Was there anything at all with respect to what you might have to do to prepare yourself to take such a job?

A. He said it would be necessary to attend a Party school in New York City.

[fol: 1007] Q. Did he state the purpose for which you have to go to school if you took the job as organizer of Erie County?

A. I guess it was—

Mr. McDonough: I object to it.

The Court: I sustain the objection.

Q. You don't recall the exact reason?

A. No.

Q. In any event he said before you became organizer you would have to go to a New York School?

A. Yes.

Q. Did you ever become county organizer in Erie County?

A. No.

Q. Did there come a time subsequently when you took another job?

A. In December, 1948, I took a job for the organizer of the Y.P.A. in Western Pennsylvania.

Q. What is the Y.P.A.

A. Young Progressives of America.

Q. Did they have an affiliation with another group?

A. The Progressive Party.

Q. Where were your headquarters?

A. Pittsburgh.

Q. At this time you maintained your Communist Party affiliation?

[fol. 1008] A. Yes.

Q. During that functioning as a Y.P.A. director did you have occasion to meet any Communists in the area of Pittsburgh?

Mr. McDonough: I object to it as immaterial.

The Court: Objection overruled.

Mr. McDonough: Exception.

The Witness: I had regular meetings with the Executive Secretary of the Communist Party for Western Pennsylvania.

Q. What was his name?

A. William Albertson.

Q. Anyone else?

A. Steve Nelson, Chairman of the Party of Western Pennsylvania.

Q. Will you state giving us to the best of your recollection what your contacts with these Communists in the Pittsburgh area amounted to?

Mr. McDonough: If the Court please, I object to his contacts or dealings with any or any officials in Pittsburgh, not being binding on this defendant, incompetent, irrelevant and immaterial with respect to the issues in this case.

[fol. 1009] The Court: I will receive it, but I think the form of the question is objectionable. You are asking him for his opinion. He can state what he did see and heard.

Q. State what you did see and hear in connection with your dealing with Albertson and Nelson.

A. I had regular weekly meetings with Albertson, discussing the organization of the Y.P.A. in that area.

Q. Did you take advice chiefly from the two people?

A. To a certain extent.

Q. What were you instructed to do?

A. My functions as a Communist—

Q. Did they urge you to take any course of conduct?

A. The Y.P.A. had a program of its own, and the Communist Party had a program, although allied to an extent there were times there were differences occurred between the Y.P.A. program and Party officials that their program should be the program of the Y.P.A.

Q. The membership of the Y.P.A. were not all Communists?

A. No.

Q. Did there come a time some incident occurred which involved the colored race problem?

A. Yes, there was a court case going on—

[fol. 1010] Mr. McDonough: All over my objection, in fact this defendant had nothing to do with it.

The Court: Objection overruled. I will receive the testimony as to the transactions, but it must be competent.

Mr. McDonough: If your Honor prefers that I object to each question, I will do it.

The Court: I will receive the testimony as to the transactions, but if he asks him to draw conclusions, that is objectionable, because it is incompetent.

Q. I will reframe the question. Did there come a time you were aware of a problem in Pittsburgh involving a colored race problem, and what transactions were involved in concerning that problem?

Mr. McDonough: Objected to.

The Court: Objection overruled.

The Witness: There was a situation where negroes had been barred the use of a public swimming pool. A number of members had staged a demonstration and had been arrested for an incite to a riot charged. It was the policy—

The Court: That is objectionable.

Mr. Henderson: I think I can straighten that out.

[fol. 1011] Mr. McDonough: I move to strike out the answer.

The Court: I will let it stand as far as it has gone. He started to say what the policy was.

Q. Did Albertson and Nelson in the conversation with you give you any instructions or advice or direction with respect to what they wished you to do in the Y.P.A. involving this problem of this colored race?

A. Yes.

Mr. McDonough: I object to it.

The Court: I sustain the objection. Did he have a conversation, if so, what was it?

Q. Did you have a conversation, what was the conversation and with whom?

Mr. McDonough: I object to it as incompetent and irrelevant and immaterial.

The Court: If they were leaders of the Communist Party it is admissible. If they weren't, it is not admissible.

Q. I ask you if you had a discussion concerning the negro race with the officials of the Communist Party?

The Court: Who were those people?

The Witness: Albertson, Western Pennsylvania Secretary, and Nelson was Western Pennsylvania Chairman. [fol. 1012] They felt that they—

Mr. McDonough: I object to that on the ground we don't know when and where it took place.

Q. Fix the time of the conversation.

A. This was the end of February, 1949.

Mr. McDonough: Your Honor understands the reason I am objecting is I understand I have to.

The Court: That is the only way I know the question is improper. If it is leading clearly it is objectionable, although I would receive the history of the transaction.

Mr. McDonough: I want the record to show clearly—

The Court: You have a basic objection to the whole line of testimony.

Mr. Henderson: Perhaps you better read the last question.

(Last question read.)

Q. Fixing the time state what was said between you, Albertson or Nelson concerning the Communist Party in this race problem.

A. This occurred around the end of February, 1949. Albertson told me they wanted me to carry through a pro-[fol. 1013] gram in the Y.P.A. to get support for these Party members who had been indicted on this incite to riot charge. I told them that the Y.P.A. program nationally had been discussing the specific problem, and felt that the Communist charge against the Communists are not the issue involved but was a question of discrimination, so that there was a difference of the opinion on it.

Q. He wanted you to try to influence the Y.P.A. group to back the Communist who had been indicted for the raid, while you said the Y.P.A. was more interested in the racial discrimination problem?

A. Yes.

Q. Did you refuse to go forward with the program suggested to you?

A. Yes.

Q. As a result of that did you get fired?

A. No, I quit.

Mr. McDonough: I object to that.

The Court: Objection overruled.

Mr. McDonough: Exception.

Q. As a result did you get fired?

A. No.

Q. What happened to you?

A. I left it a few weeks after that.

[fol. 1014] Q. Can you state whether or not your leaving the job had to do with your inability with Albertson in this program?

A. It was a personal decision to leave, although it probably would have ended up that way.

Mr. McDonough: I object to that.

The Court: I sustain the objection. Strike it out.

Q. Following your connection with the Y.P.A., did there come a time you returned to Niagara Falls, and, if so, when?

A. March, 1949.

Q. Did you have any contact with the defendant, and, if so, when, state what he said and what you said?

A. Shortly after I returned I got together with him, it would have been in March, more likely the early part of April, 1945, and discussed the problem of reactivating the party group in Niagara Falls.

Q. Communist Party?

A. Yes.

Q. Do you have any recollection of a specific meeting with Noto during this period in Buffalo, and, if so, what was said by him and you?

A. There were a number of meetings from April to June. I say every few weeks more or less. They were general [fol. 1015] discussion of problems that existed in the Niagara Falls area.

Q. At that time what was your business?

A. June of 1949 I was operating a dry-cleaning and clothing repair business in Niagara Falls.

Q. Did there come a time the defendant and you had a conversation concerning the premises at which you operated this business?

A. In the late summer of 1949 he came down and discussed with me, discussed the possibility of setting up printing equipment on the premises to see whether there was enough room to set it up. He told me he would have someone to operate it after the hours of business would be closed.

Q. At that time did he discuss anything about the reason for having the equipment?

A. He was looking for a suitable location that would not be well known.

Q. Later did you have occasion to visit with Noto at this place of business of yours, and what was said?

A. After that first discussion, he came down to Niagara Falls a week or so later with another official to look over the place to see whether it would be suitable to set up this equipment.

Q. Can you describe this other individual?

[fol. 1016] A. I did not know him by name. I would say he was in his early forties, rather stocky. He spoke with an accent that was uncommon to this area.

Q. Did he and Noto have any conversation in your presence concerning the suitability of your premises?

A. Yes.

Q. What was the conversation?

A. This fellow thought it was not satisfactory, because the flooring was not solid enough to maintain the type of equipment they had in mind.

Q. In 1950, did you have any contact with the defendant Noto, if so, what was said by you and him?

A. There were infrequent meetings. I saw him three or four times during that year. All of the meetings would have been general discussions as to the problems of the party in the Niagara Falls area.

Q. Had Noto asked you to reactivate the Party?

A. Yes.

Q. Did you get some attempt to do so?

A. I called two or three meetings during that period.

Q. Going back to the printing press, was that ever put in your property at Niagara Falls?

A. No.

Q. Where was that cleaning plant?

A. Main Street near Niagara Avenue, second floor.

[fol. 1017] Q. Later on did you have a further contact with the defendant concerning printing equipment, and state the time and what was said by you and him?

A. In the spring of 1951, he came down to see me with another party who he introduced to me as Jack and discussed the possibility of storing printing or mimeograph equipment.

Q. Where did he want you to store it?

A. In my cellar.

Q. What did he say?

A. I agreed.

Q. What did you do?

A. The following week I met this fellow Jack and picked up the equipment and brought it back to Niagara Falls.

Q. Where was the house from which you picked up the equipment?

A. I would say Michigan and Swan.

Q. Just exactly what did you pick up?

A. A number of pieces of electrical printing equipment, I am not sure of the exact type of it.

Q. Any mimeograph machines?

A. Yes.

Q. What was done with the machines as you have described?

A. I stored them in my cellar.

[fol. 1018] Q. Did you have further contact in 1951 with the defendant?

A. In the summer of 1951 he contacted me and asked me to locate some homes around there, but not known to the Communists, so people could stay there in the event they had to be in hiding.

Q. What people?

A. Party members.

Q. What did you say?

A. I told him I would see what I could do.

Q. You said that was the summer of 1951?

A. Yes.

Q. Did you see John Noto at any later time?

A. I spoke to him over the phone after that, but I don't believe I saw him again.

Q. Did you attempt to contact him on the phone, and if so, describe what your conversations were?

A. In the fall of 1951 I tried to contact him a number of months. I did not know where he was located. Eventually I left a message with the Lumpkin family to call me, and he called me the latter part of November.

Q. What was said by him and what did you say?

A. I asked him about someone coming down and picking up the printing equipment and finding some other place [fols. 1019-1027] to store it.

Q. What is your best recollection of the date of that conversation?

A. It would be the last two weeks in November.

Q. What happened as a result of that conversation?

A. The following week two men came down and picked it up.

Q. Did you know them?

A. No.

Q. That was the last contact you had with the defendant?

A. That is right.

Q. State again when you divorced yourself from the Communist Party?

A. It was at that time.

Mr. Henderson: You may ask.

Cross-examination.

By Mr. McDonough:

[fols. 1028-1037] Q. When Mr. Noto discussed the proposition of the printing press you understood the reason?

A. Yes.

Q. It was in the event the Government made it impossible for the Party to have ordinary legal printing channels, that they would be in a position to still continue to print and mimeograph which they had previously got from legitimate facilities?

A. Yes.

Q. You knew if the printing eventually was established the Party wanted to continue its printing work?

A. Yes.

[fol. 1037] FLORENCE BERKHEIMER, called as a witness by and in behalf of the Government, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Henderson:

Q. Mrs. Berkheimer, where do you reside at the present time?

A. 927 Broadway.

Q. What city?

A. Newark, New Jersey.

Q. Was there a time when you resided at a place called 282 Graylock Parkway, Bellview, New Jersey?

A. Yes.

Q. Did you get to know the defendant, John Noto, and if so, can you point him out in the court room?

A. I don't know. I did not know John Noto, but I know a Mr. Peresi.

Q. Have you looked at the defense table in this room?

A. Yes.

Q. Do you see the man you knew as Louis Peresi?

A. Yes.

Q. Is that the same man who sits with his counsel, Mr. McDonough, wearing glasses?

A. That is he.

Q. Will you state when you first made the acquaintance [fol. 1038] of Mr. Noto at Bellview, New Jersey?

A. I think it was in November, 1953 or 1954.

Q. November, 1954?

A. 1954, I guess it was.

Q. Can you give us approximately when in 1954 he moved out?

The Court: She does not know when he moved in.

The Witness: In November.

Q. When did they move out?

A. About June or July.

The Court: Let us get this straight. When did they move in, where did they move into, that is not clear?

Q. At the time you first met the defendant John Noto, you were living at 282 Graylock Parkway, Bellview, New Jersey?

A. Yes.

Q. Did the defendant move into those premises?

A. He moved in on the first floor.

Q. Is this a two-family unit?

A. That is right.

Q. When did he move into the premises which he occupied?

A. First floor.

Q. When did he move in?

A. I would say November.

[fol. 1039] Q. Who moved in with him?

A. His wife and daughter.

Q. When did he leave the premises at 282 Graylock Parkway?

A. I would say the following year, either June or July it was.

Q. During that period of time when you were both tenants in this property, under what name did you know Mr. Noto, the defendant here by?

A. Frank Peresi.

Q. At any time prior to the time he moved out did he advise you that he had the name of John Noto?

A. No.

Q. Under what name did you know Mrs. Noto or Mrs. Peresi?

A. I just called her Mrs. Peresi.

Q. Did you know anything about the work he was doing down in New Jersey?

A. No.

Q. What his occupation was?

A. One time he got discussing about work, he was supposed to be working in a place in Bloomfield. I could not recall what type of work he was doing.

Mr. Henderson: You may ask.

Cross-examination.

By Mr. McDonough:

Q. Mrs. Berkheimer, you said you lived in this two-family house, is that right?

[fol. 1040] A. Yes.

Q. Were you the landlady, did you own the house?

A. No.

Q. You were a tenant, too?

A. Yes.

Q. Who lived there in your apartment?

A. Nobody but myself and my child.

Q. Which apartment was that?

A. Second floor.

Q. Where did the defendant and his family live?

A. On the first floor.

Q. You said he had his wife and daughter with him?

A. Yes.

Q. She was a little girl then?

A. Yes.

Q. How old, do you remember?

A. She might have been about two or three.

Q. Whom did you pay your rent to?

A. The landlady.

Q. Every month?

A. Every month.

Q. Get a receipt for it?

A. Yes, I did.

Q. You said you knew them by the name of Peresi?

A. Peresi.

[fol. 1041] Q. They were there from November, 1953, until June or July, 1954?

A. Well, yes.

Q. Were your relations always pleasant?

A. Yes, we never had any words.

Q. What is your occupation?

A. Now?

Q. What was it then?

A. I worked for Electronics.

Q. When did someone first approach you with respect to being a witness in this case?

A. Around October, after he was arrested.

Q. 1955?

A. Of this year, 1956.

Mr. McDonough: That is all.

Redirect examination.

By Mr. Henderson:

Q. You mean 1955. This is April, 1956.

A. Yes, I am sorry.

Mr. Henderson: That is all.

[fol. 1042] JOHN MULLER, called as a witness by and in behalf of the Government, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Henderson:

Q. Where do you live, Mr. Muller?

A. 464 Chestnut Street, Union, New Jersey.

Q. What is your job or occupation?

A. I am employed by the Goodyear Rubber Products Corporation as sales manager and supervisor of personnel.

Q. How long have you held that job?

A. 14 years.

Q. Do you recognize the defendant John Noto in this case, do you see the defendant in this case?

A. Yes, I do.

Q. Did there come a time when you met this defendant, John Noto in connection with your job as supervisor of the Goodyear Products?

A. Yes, there did.

Q. When was that?

A. That was in November, 1954.

Q. At that time did there come an occasion when you interviewed him seeking employment in the plant?

A. Yes.

[fol. 1043] Q. What name did he give you for himself at the time of this interview?

A. At that time he gave me the name of Louis Peresi.

Mr. Henderson: Mark this.

(Thereupon report of interview marked Government's Exhibit G-94 for identification.)

Q. I show you Government's Exhibit G-49 for identification, and ask you if you can identify that?

A. This is a report of interview that I wrote after getting the information from Louis Peresi.

Q. That is this man sitting here who is the defendant in this case under the name of John Noto?

A. Yes.

Q. That was made at the time of his application for work?

A. That is right..

OFFERS IN EVIDENCE AND OBJECTIONS THERE TO

Mr. Henderson: I offer it in evidence.

Mr. McDonough: I object to this, if the Court please; in the first place, I submit it is incompetent, irrelevant and immaterial on the issues in this case. I object on the further ground it has not properly been identified.

[fol. 1044] The Court: You have not shown how it is made, first. We don't know whether it was written down when the defendant was there or some time afterward.

Q. Looking at Government's Exhibit G-94, will you state whether or not it is in your handwriting?

A. Yes, it is.

Q. The manner in which it was made, was the defendant present?

A. Yes, he was.

Q. Does this consist of answers in your handwriting which were made by him?

A. Yes.

Q. What is the data that he gives in that?

Mr. McDonough: I object to that.

Q. I mean the nature of the data.

The Court: Objection overruled.

Mr. McDonough: Exception.

A. His name and address and former—

The Court: Personal history generally speaking?

The Witness: Yes.

Mr. Henderson: I offer it in evidence.

Mr. McDonough: Same objection.

The Court: Objection overruled.

[fol. 1045] (Thereupon Government's Exhibit G-94, previously marked for identification, was received in evidence.)

Q. This bears the name of Louis Peresi, 282 Graylock Parkway, Bellview, New Jersey. Where is that with ref-

erence to the plant, what distance, the plant of the Good-year Rubber Company?

A. I should say a distance of three to five miles.

Q. This bears Social Security No. 1-30285747?

A. That is correct.

Mr. Henderson: At this time I would like to point out to the jury that the 1951 Income Tax Return of John Noto—

Mr. McDonough: I object to this. Documents are documents. I don't think either counsel have a right to point out anything to the jury by way of commentary on some testimony.

The Court: These are ways of bringing it to the attention of the jury. Exhibits are no good if you just shovel them to the jury. Objection overruled.

Mr. Henderson: In the 1951 Income Tax Return of John [fol. 1046] Noto, it gives "Sub-District Organizer", the Social Security on that copy shows the number was 134203340, and upon this document, the Government's Exhibit G-94, the Social Security number is 130285747.

Mr. McDonough: I object to the question, I ask to strike it out, that it is injected and can be injected for only one reason, to prejudice the defendant for a crime with which he is not charged. I submit it has no evidentiary value and no competency presented in this lawsuit.

The Court: Objection overruled, motion denied.

Mr. McDonough: Exception.

(Thereupon two documents marked Government's Exhibits G-95 and G-96 for identification.)

Q. Following this interview which you wrote down on G-94, was he granted employment?

A. Yes, he was.

Q. What was his work?

A. He was hired as helper and warehouse man and stock-keeper.

Q. I show you Government's Exhibit G-96, and ask you [fol. 1047] what that is?

A. This is the employee's withholding exemption certificate that the defendant had to fill out. This is the second one that he filled out after he changed his dependency status.

Q. Is this in his own handwriting?

A. No, this one is not. That is his signature.

Q. It is his signature?

A. Yes.

Q. I show you Government's Exhibit G-95 for identification, and ask you what that is?

A. This is the employee's withholding exemption certificate that the defendant filled out after he was granted employment.

Q. Is that in his handwriting?

A. That is in his handwriting.

Q. These two certificates form part of the official records of your firm?

A. Yes, they do.

Q. They show the Social Security number of the employee, do they, and his residence?

A. Yes, they do.

Mr. Henderson: I offer these in evidence.

Mr. McDonough: I object to them, chiefly on the grounds [fol. 1048] they prove nothing at issue in this case. I submit even if competent, they are cumulative, and they are here not for the purpose of proving anything at issue in this case and prejudicial to this defendant.

The Court: I take it they are both made in the ordinary course of business.

Mr. Henderson: That is right.

The Court: If that is so, you have not shown that. You have to show when they were made with reference to the transaction, and it was the ordinary course of business to make such records, and they are such records.

Q. Were these two Exhibits G-95 and G-96 in accordance with some regulation or statute by you concerning an employee?

A. Yes, they were.

The Court: Who made those documents?

The Witness: One was made by the defendant.

The Court: Were you there?

The Witness: Yes, I was.

The Court: You saw him write it?

The Witness: Yes.

[fol. 1049] The Court: You don't have to offer that as a record made in the regular course of business.

Mr. Henderson: I offer them in evidence.

The Court: The other one was made under other circumstances.

Mr. Henderson: One contains the signature only.

The Court: Which one is that?

Mr. Henderson: G-96, is that correct?

The Witness: Yes.

The Court: That was made in your presence by the defendant and signed by him?

The Witness: No, the other one was.

The Court: Which one did he make and sign in this witness' presence?

The Witness: Exhibit G-95.

Q. Was that made in your presence and signed by the defendant?

A. Yes.

Q. Is the whole body of it in the defendant's handwriting?

A. Yes, it is.

The Court: I will receive G-95 in evidence.

(Thereupon Government's Exhibit G-95, previously marked for identification, received in evidence.)

[fol. 1050] Q. With reference to this, can you state whether or not this G-96 was made by the defendant, signed by him?

A. Signed by the defendant, yes.

Q. Is that a copy which you have in your hand part of the records of the Goodyear Rubber Company?

A. Yes.

Q. Is that made pursuant to a regular practice of maintaining withholding of employee's pay?

A. Yes, it is.

Q. When is it made?

A. At the time of an employment or change of dependent status.

Q. This shows change of dependent status?

A. Yes.

Mr. Henderson: I offer it in evidence.

Mr. McDonough: I object on the same ground.

The Court: Let me see that G-96. Do you know when this was made of your own knowledge? I am speaking of G-96?

The Witness: The time?

The Court: Yes, it was not made in your presence?

The Witness: No.

The Court: He did not sign it in your presence?

The Witness: He signed it in my presence.

[fol. 1051] The Court: When was that? You saw him sign it?

The Witness: Yes.

The Court: I am talking about G-96.

The Witness: Yes.

The Court: You don't have to prove that as a record made in the ordinary course of business.

Mr. Henderson: I asked him before if he saw him sign it. I offer it in evidence.

Mr. McDonough: I object to it on the same ground, no competency or materiality, interjected only for the purpose of prejudice.

The Court: Objection overruled. I notice it is not dated. Can you state when it was signed?

The Witness: No.

The Court: With reference to the other one can you tell us?

The Witness: Yes, at the time of employment.

The Court: The date appears on G-95?

The Witness: Yes.

The Court: It does not appear on G-96?

The Witness: No.

[fol. 1052] The Court: Are you able to tell us when G-96 was signed, it was after?

The Witness: It was after.

The Court: Do you know how long after?

The Witness: I would say in approximately a year.

The Court: All right.

Mr. Henderson: This first one is dated 1/16/54.

(Thereupon Government's Exhibit G-96 for identification was received in evidence.)

Q. Do you know what this change of status was shown on Exhibit G-96?

The Court: You mean what does G-96 show?

Mr. McDonough: I object to it a immaterial.

The Court: Objection overruled.

The Witness: It was a change from one to three dependents.

Q. Do you know how this addition dependent was acquired?

Mr. McDonough: Over my objection.

The Court: He does not know anything about it, except what is on that statement.

Q. Do you know anything about the affairs of the defendant?

A. The reasons the defendant gave me?

Q. Yes, what was it?

[fol. 1053] A His wife would be no longer working, and he would be claiming his wife and child.

The Court: That is what he told you?

The Witness: Yes.

Q. How long did the defendant known to you as Louis Peresi remain in your employment, what was the date he left?

A. He left July 29, 1955.

Q. He came with you November, 1953?

A. 1954. I think that was 1953.

Q. Have you got a book?

The Court: G-95, the first certificate is dated Januray 6th 1954, isn't that right?

Mr. Henderson: That is right.

The Court: In the light of that, when did he come to work for you?

Q. Have you brought a book with you?

A. In November, 1953.

The Court: Just a moment.

Q. When he came?

A. Yes.

Q. The first withholding certificate is the one dated 1/6/54?

A. Yes.

[fol. 1054] Q. You have referred to your records which you keep of employees' time?

A. Yes.

Q. The beginning of employment and when they leave?

A. Yes.

Mr. Henderson: You may ask.

Cross-examination.

By Mr. McDonough:

Q. You told us he went to work in November, 1954 on direct examination?

A. I beg your pardon?

Q. You told us he went to work in November, 1954 when first asked about it.

A. I believe I said I tried to correct myself.

Q. Were you in error when you said 1954?

A. Yes, I was.

Q. It was November, 1953?

A. Yes, it was.

Q. You had the benefit of these company records and your records here to help you testify?

A. Yes.

Q. You brought them from Newark with you?

A. Yes.

Q. You have studied these records on your way up here or after you got here?

[fol. 1055] A. I referred to them.

Q. Still you made an error of a year as to your statement when this man started to work when first asked?

A. Yes.

Q. You say it was November, 1953?

A. Yes.

Q. He went to work as a helper or stockkeeper?

A. Yes.

Q. He worked for about how long?

A. Approximately 20 months.

Q. Was he a good worker?

A. He did what he was told to.

Q. Let us see if we can elaborate on that. Was he good enough that you offered him a promotion just before he left?

A. Yes.

Q. You were going to make him a foreman?

A. He was going to be moved from one position to another. The job takes the title of foreman over a number of people.

Q. He was going to be promoted?

A. Yes.

Q. You don't promote people ordinarily who are not good workers?

A. No.

[fol. 1056] Q. You have told us this Exhibit G-96 which the Court allowed in evidence was a W-2 which showed a change in status?

A. Yes.

Q. You said he told you his wife would no longer be working?

A. Yes.

Q. So, therefore, he wanted to increase the previous number of dependencies?

A. Yes.

Q. So there is no mystery about this, I should have said W-4, this first W-4, Exhibit G-95, that was the original?

A. Yes.

Q. He put only one dependency there?

A. Yes.

Q. Did you meet his wife?

A. I had a chance meeting her one day on the street. I was introduced to his wife.

Q. I notice Exhibit G-96 is not dated?

A. No.

Q. But it was right after G-95?

A. Yes.

Q. He told you then his wife would no longer be working, he wanted to take his full exemptions of three?

[fol. 1057] A. I believe that is true.

Q. With respect to the original he only had one exemption, is that right?

A. Yes.

Q. Do you want to look at this?

A. No.

Mr. McDonough: That is all.

Mr. Henderson: Again with the permission of the Court I want to point out on this Exhibit G-95, which the witness testified was made out wholly in the handwriting of the defendant that the name Louis Peresi, 282 Graylock Parkway appears on this certificate No. G-95, and bears Social Security No. 130285747, whereas the 1951 Income Tax Return of John Noto which lists him as organizer for the Western New York Sub-district, C.P., has the Social Security No. 134203340.

Redirect examination.

By Mr. Henderson:

Q. When Mr. Noto first came to the office seeking employment, did he have the same facial appearance he now has?

[fol. 1058] A. At that time he had a mustache.

Q. Did he later remove it?

A. Yes, he did.

Q. About how long after first taking employment, can you estimate approximately?

A. A year.

Recross-examination.

By Mr. McDonough:

Q. You said he left your employment July 29, 1955?

A. Yes.

Q. There is no mistake about that date, is there, no question about it, you mean last July?

A. I meant it would be a day or two?

Q. I am not talking—did you check the company records on when he left?

A. No, I did not look at them.

Q. When you said July 29, weren't you giving us the exact termination date?

A. Yes, that was written for me before I came up. I had to get that from the bookkeeper, and I asked for the time he was working there.

Mr. McDonough: All right.

Mr. Henderson: That is all.

[fol. 1059] ARTHUR GIRTELL, called as a witness by and in behalf of the Government, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Henderson:

Q. Mr. Girtell, will you speak up so the jury can hear you?

A. Yes, sir.

Q. I want you to invite your attention to this table where two gentlemen are sitting. Will you state whether or not you recognize one of them?

A. Oh, yes.

Q. There is one on trial, or John Noto, the defendant. Do you recognize a man here whom you knew under a different name at some period?

A. Under a different name, yes.

Q. What name are you referring to?

A. Peresi.

Q. Can you point out the man you formerly knew as Peresi in this court room?

A. Yes, this gentleman with the glasses, on the end.

Q. Is that the man you refer to as Louis Peresi?

A. That is right.

Q. Where are you employed?

A. Goodyear Rubber Products.

[fol. 1060] Q. How long have you worked there?

A. Going on five years.

Q. Did there come a time when you met the defendant, John Noto, known to you as Louis Peresi at this employment?

A. That is where I met him.

Q. Are you still with the Goodyear Products Company?

A. Oh, yes.

Q. You knew this Louis Peresi, also John Noto, for that full period of employment at that plant?

A. That is right.

Q. During that time did you have an occasion to talk to him as to where he came from and what his background was?

A. He told me he came from Ohio—

Mr. McDonough: I object to this, if the Court please, incompetent, immaterial, having no bearing on the issues in this lawsuit.

The Court: Objection overruled. You have not shown first where Goodyear Products was from this witness.

Q. Where is this Goodyear Products with respect to Newark?

A. Corner of Edison Place and Mulberry Street, 144 [fol. 1061] Mulberry Street.

The Court: What city?

The Witness: Newark.

Q. Are you familiar with Graylock Parkway and Bellview?

A. No.

Q. Are you familiar with the town or suburb of Bellview in New Jersey?

A. No.

Q. Where did he live when you knew him, do you know?

A. He lived on Springfield Avenue.

Q. How far is that from the Goodyear Products Company?

A. I should judge a mile, a little over a mile.

Q. How long did you know him approximately in the work at Goodyear Products Company?

A. He worked there about 18 or 20 months.

Q. Did he work with you?

A. On the same bench.

Q. What was the work?

A. Rubber work on hose, fire hose, any kind of hose.

Q. During this period of 20 months, did you have a conversation with him respecting his background and where he came from? If so, state what you said and what he said

Mr. McDonough: I object to that.

The Court: Objection overruled.

[fol. 1062] The Witness: I asked him, he told me he came from Ohio. He said he was out there with his father. His father was in the grocery business, he was working with him. When his father passed away he took over, and then the business failed, and that is it.

Q. Did there come a time when he quit the job and left?

A. Our place?

Q. Yes.

A. Oh, yes.

Q. Did he have any conversation with you at that time?

A. Naturally, I asked him why he was quitting. He said his wife's mother was very sick in California, and he was going out there, being she was the only child.

Q. When you first saw him as a fellow employee was his facial appearance the same as it is now?

A. No.

Q. What was different?

A. He had a mustache.

Q. At any time did he tell you his name was John Noto?

A. No, sir.

Q. At all times you knew him as Louis Peresi?

A. That is right.

Mr. Henderson: You may ask.

[fol. 1063] Mr. McDonough: No questions.

OFFER IN EVIDENCE

Mr. Henderson: You may step down. At this time I have certain matters I would like to offer. I at this time offer Form 941, Employer's Quarterly Federal Tax Return of Western New York, Sub-district, Communist Party, 312 Purdy Street, Buffalo, for the quarter ended September, 1951. First will you mark this?

(Thereupon document marked Government's Exhibit G-97 for identification.)

Mr. Henderson: This Exhibit G-97 contains the regular certificate of the Treasury Department authenticating this document, which shows the signature of John J. Noto, Chairman of the organization, dated October 18, 1951, and below in the block 10, under "Employer's name", Western New York, Sub-district, Communist Party, 312 Purdy Street, Buffalo 8, New York. I offer that in evidence.

Mr. McDonough: I do not question the certified copy [fols. 1064-1068] of the document. My objection is that it is immaterial on the issue in this lawsuit.

The Court: Objection overruled.

(Thereupon Government's Exhibit G-97, previously marked for identification, received in evidence.)

Mr. Henderson: May I read to the jury, that this Employer's Withholding Quarterly Federal Tax Return, Form 941, shows that the defendant John Noto received at the time October 18, 1951, total of \$247.00 wages and that the payer of the wages was Western New York Sub-district of the Communist Party, listing its place of business 312 Purdy Street, Buffalo, New York. I have shown Mr. McDonough the original of an outline for teaching purposes of the Communist Party, and we marked a photostat before. He is now examining it.

[fol. 1069] MOTION OF DEFENDANT FOR A DISMISSAL OF
THE INDICTMENT, ETC., AND DENIAL THEREOF

Mr. McDonough: If the Court please; the defendant moves for a dismissal of the indictment, discharge of the defendant and for a directed judgment of acquittal on all the grounds stated in the rules of criminal procedure, and on all the grounds stated in our motion to dismiss the indictment made prior to the trial, and on the ground that the Government has failed to prove the guilt of the defendant of the violation of the provision of the Smith Act covered by the indictment. I know the evidence in the case is as fresh in your mind as mine. There is no need elaborating on the testimony of the various witnesses. I submit not only is the proof too insufficient, but it is insufficient to prove violation of the statute within the period covered by the Statute of Limitations as applicable to the offense charged.

The Court: I deny the motion. There are four points, [fols. 1070-1109] Basic aim of the Communist Party. Second, he was a member. Third, he had knowledge of the basic aims. Fourth, he had intention to use that knowledge when the time came. I think that is sufficient. I deny the motion.

Mr. McDonough: Exception.

[fols. 1110-1200] Mr. McDonough: I would like to begin reading excerpts from certain Government's Exhibits and defense exhibits.

[fol. 1201] I would like to read excerpts from D-5, "The Twilight of World Capitalism", by William Z. Foster, copyright 1949, Page 125:

"In order for the people to put the United States firmly on the path toward peace, democracy, and general well-being the power of the monopolists who dominate our country must be curbed and finally broken, and the people themselves must take political charge, under the leadership of the working class. The struggle for socialism grows inevitably out of the everyday fight of the workers and their allies, especially against the present menaces of [fol. 1202] economic chaos, fascism, and war. In all good time the American people, on the basis of their existing conditions, will decide how and in what forms they will introduce socialism. The way our party foresees the possible development of the future is along the following general lines:

"First, we propose the regular election of a democratic coalition government, based on a broad united front combination of workers, small farmers, Negroes, professionals, small business groups, and other democratic elements who are ready to fight against monopoly, economic breakdown, fascism, and war. This type of united front government could well have behind it an overwhelming majority of the people, as it has in other lands. It goes without saying that the election of such a democratic government could only be brought about in the face of powerful and very surely violent opposition from organized reaction. The whole history of the American class struggle, which is full [fol. 1203] of examples of employer violence in strikes and in other mass struggles, teaches this lesson with unmistakable clarity. The bitter attacks made against the Progressive Party, led by Henry Wallace, during the 1948 elections, gave a sure indication of the frenzy and desperation with which the capitalists would confront a people's united front combination that was strong enough actually

to threaten their control of Congress and the Presidency. Obviously, it would be an extremely difficult proposition to elect a truly democratic government in the face of this strong, violent, and reactionary opposition."

° At the bottom of Page 126:

"To promote the election of a progressive, coalition government of this type which, by force of circumstances, would move to the Left and, eventually, to socialism, on the general pattern of the European People's Democracies, is obviously not to advocate a program of force and violence, the enemies of the Communist Party to the [fols. 1204-1220] contrary notwithstanding. The charge by the Department of Justice that our party advocates the forcible overthrow of the government is a brazen conscious lie. The plain fact of the matter is that the Communist movement in this country as well as abroad, since the Seventh World Congress in 1935, has been going along on the practical working theory that in this period, because of the broad mass struggle against fascism and war, it had become possible in a whole number of democratic countries, including the United States, legally to elect democratic governments which could, by curbing and defeating capitalist violence, orient themselves in the direction of building socialism."

[fol. 1221] Now, if the Court please, I would like to read some extracts from Defendant's Exhibit D-6, which is the [fol. 1222] History of the Communist Party in the United States by William Z. Foster, Published by International Publishers in 1952, first at page 36.

[fol. 1223] Page 549 of the same volume:

"The American Road to Socialism.

"The transition from capitalism involves a fundamental reorganization of the nation's economy, from one based on the private ownership of industry for private profit to one of collective ownership for social use, and also a basic political shift from the tyrannical rule of a small group of

monopolists to the democratic regime of the broad working class and its allies, which leads to the abolition of class society. Therefore, it is a revolution. Capitalism established itself in all the major countries of revolutions. These revolutions, accomplished in the youth and progressive period of capitalism, were constructive. In the United States there have been two such bourgeois revolutions; that which achieved national independence in 1776-83, and that which abolished Negro slavery in 1861-1865. The workers' advance to socialism will be infinitely more progressive than the bourgeois revolutions, because it not only promises but realizes democracy and well-being for the broadest masses of people.

Socialism is not an invention of the Communists, as reactionaries assert. Nor is the abolition of capitalism the fruition of a Communist conspiracy. On the contrary, socialism grows out of the long-continued everyday struggles of the workers, enlightened and organized by Marxist theory and guidance. It is the ultimate expression and climax of these struggles. The working class and its allies, the Negro people, small farmers, professionals, and others, making up a vast majority of the people, are oppressed by ever greater economic and political hardships under capitalism. They are especially menaced by war and fascism. These evils are greatly accentuated because the capitalist [fol. 1225] is sinking deeper and deeper into general crises. Inexorably the masses must unite ever more strongly and fight with increasing vigor to combat the growing disasters of economic breakdown, destitution, fascism, and world war. The daily struggles around broader and ever more urgent demands, led increasingly by the Communist Party, finally culminate in a mighty movement to abolish the capitalist system itself, as the source of the intolerable evils, from which the people suffer. The struggles of the workers for immediate demands, in which they create the necessary economic organizations, build the Communist Party, acquire class-consciousness, develop a program, and win democratic rights for themselves, are an organic part of the historic struggle for socialism. This has been basically the course of political development in all those countries where socialism has been, or is now being established. The breakdown of the capitalist system makes socialism

[fol. 1226] both indispensable and inevitable all over the world, including the United States.

"The central task of the Communist Party, with its Marxist-Leninist training and in its role as the vanguard of the working class and the nation, is to give the elemental mass anti-capitalist movement the necessary understanding, organization, and leadership. Without this the workers and their allies could never arrive at their historic goal of socialism. The Communist Party is not an intruder among the toiling masses, as the Department of Justice alleges, seeking to thrust an alien program upon them. Instead, the Party is flesh and bone of the working class. It always marches in the forefront of that class, expresses most clearly its interests, and finally leads it and its allies in realizing the great objective of socialism, which is the culmination of [fol. 1227] the entire historic experience of the working class.

"The Communist Party projects and works for a democratic conduct of the daily class struggle and also of the advance to socialism. The Preamble to the Constitution of the Party states this policy as follows: 'The Communist Party upholds the achievements of American democracy and defends the United States Constitution and its Bill of Rights against its reactionary enemies who would destroy democracy and popular liberties. It seeks to safeguard the welfare of the people and the nation, recognizing that the working class, through its trade unions and by its independent political action, is the most consistent fighter for democracy, national freedom, and social progress.

"Communists are the chief fighters against the two major threats of violence in modern society, imperialist inter-[fol. 1228] national war and fascist civil war, both of which emanate from the capitalist. The Communist Party's democratic aims are in line with the writings of Marx, Engels, Lenin and Stalin, with the course of the everyday struggles of the workers and their allies, and with their world experience in establishing socialism. The danger of violence in the daily class struggle and in the inevitable and indispensable advance of the workers and the nation to socialism could come only from the capitalist class, which, seeing its use every means possible to thwart the democratic social-

ist will of the people. For as the great Marx has truly said, there is no case in history where a ruling class has yielded up its domination without make a desperate struggle.

"Marxist theoreticians, while warning the workers against capitalist violence, have always pointed out possibilities for the peaceful establishment of socialism in countries where the democratic elements are strong. Thus, Karl Marx, three generations ago, before the advent of imperialism, with its highly centralized, heavily armed, and bureaucratic state, said that 'If, for example, the working class in England and the United States should win a majority in Parliament, in Congress, it could legally abolish those laws and institutions which obstruct its development.' Lenin also, in mid-1917, outlined a peaceful perspective for the Russian Revolution. And Stalin, writing in 1928, while pointing out the danger of capitalist violence at that time, also said that with the strong growth of world socialism, 'a peaceful path of development is quite possible for certain capitalist countries.' The C.P.U.S.A. proceeds upon the basis that such a possibility exists in the United States.

[fol. 1230] "The Communist Party's orientation for a possible peaceful transition to socialism in the United States is based upon four elementary considerations: first, the fight of the working class for its immediate demands is the very substance of democracy, it strengthens basically the democratic forces in our country, and by the eventual establishment of socialism it raises democracy qualitatively to a new high level; second, the working class, led by the Communist Party, harmonizes its methods with its ends by fighting for both its immediate and ultimate objectives with the most peaceful and democratic means possible; third, the workers and their allies, constituting the vast majority of the people and possessing immense organizations, now have the potential power to curb, restrain, and make ineffective whatever violence the capitalists may undertake in their attempt to balk the will of the people and to prevent [fol. 1231] the establishment of socialism; and fourth, in recent years, on the international scale, there has been an enormous growth of power in the camp of democracy and socialism."

Page 553:

"American conditions and world socialist experience makes it realistic, however, to suppose that, in their march to socialism, the American people, as many others are doing, will take their path through the successive phases of the people's front and the people's democracy. But in so doing, they will doubtless reflect specific American conditions. That is, just as there have been in this country special adaptations of the people's front slogan (examples, the farmer-labor party, the democratic front, the Roosevelt coalition, and now the peace coalition), so there will also almost certainly develop special American forms and [fol. 1232] applications of the people's democracy and its slogans."

Page 554:

"It is in line with the foregoing principles and perspectives that the Communist Party has long proposed the regular election, under the United States Constitution, of a broad coalition government, an American variant of the people's front, made up of the representatives of the political and economic organizations of the workers, the Negro people, small farmers, intellectuals, and other democratic strata, who constitute the great bulk of the American people. In the 1948 election campaign the Communist Party, through its general secretary, Eugene Dennis, stated this political policy as follows: 'For a people's government that will advance the cause of peace, security and democracy. For an anti-imperialist, anti-monopoly government. What is projected in this slogan, it should be made clear, is a political objective that reflects the united [fols. 1233-1240] front program which is bringing into a broad coalition all the democratic and anti-imperialist forces including the third party movement.' Despite the dangerous threat of fascism in this country, the Communist Party holds that the workers and their allies could elect such a people's front government under the Constitution by vigorous action."

[fol. 1241] RENEWAL OF MOTION OF DEFENDANT FOR A
DISMISSAL OF THE INDICTMENT, ETC., AND DENIAL THEREOF

Mr. McDonough: If the Court please, the defendant renews the motion made at the close of the Government's case for a dismissal of the indictment and discharge of the defendant and a directed judgment of acquittal, and on all grounds stated at the close of the Government's case, without being deemed to have withheld any other ground, I now urge the motion for a directed judgment of acquittal, on the ground, and under the proof, any other verdict than one of not guilty would be contrary to the law, contrary to the evidence, contrary to the weight of the evidence, that the Government has failed to establish such a case, and present danger of the happening of the event, which Congress would have a right to legislate concerning under the Smith Act to make inoperative of operation of the first amendment of the Constitution. the Government has failed to establish the commission of a crime or each of or all of the essential four elements of the crime within the period of the Statute of Limitations in such case made and provided, and all other grounds urged at the close of the Government's case. I am making motions on all the grounds.

The Court: The motion is in all respects denied.

Mr. McDonough: May I respectfully except?

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[fol. 1243] MOTION TO REOPEN DEFENDANT'S CASE AND
DENIAL THEREOF

Mr. McDonough: I move to reopen the defendant's case. The only purpose of moving, I now move to strike out the testimony of the witness Lautner with respect to his opinion as to the quality or meaning of Government's exhibits 41 and 42, which are the 1945 and 1948 constitutions of the Communist Party of the U.S.A. on the ground that the witness Lautner originally stated it to be his own understanding as a leading member of the Communist Party in 1945, that the Court originally struck out opinion testimony on that point, that thereafter he stated it to be a common understanding and the court reinstated the tes-

[fol. 1244] timony or allowed him to repeat his opinion testimony on that point, but that thereafter on cross examination he again stated it was his own understanding based upon the fact that he was a leading member of the Communist Party in 1945.

The Court: I deny the motion.

RENEWAL OF OFFER IN EVIDENCE AND DENIAL THEREOF

Mr. McDonough: May I respectfully except. I now renew my offer in evidence—

The Court: The proof is reopened for the purpose of allowing this motion, having been reopened the motion is denied.

Mr. McDonough: I should have stated my motion to reopen was for two purposes.

The Court: It is allowed for the other purpose.

Mr. McDonough: I re-offer in evidence defendant's exhibit D-34. I again offer defendant's exhibit D-34, being a copy of the Daily Worker, containing certain testimony of William Foster in sur-rebuttal to that portion of Foster's writings which was read by the United States Attorney in rebuttal on the trial.

The Court: I decline to receive it on the ground I consider it to be incompetent, irrelevant and immaterial.

DEFENDANT RESTS

Mr. McDonough: I respectfully except. With that the defendant again rests. May the Court deem the motions made at the original close of all the evidence renewed on all the grounds then stated?

The Court: Motions are in all respects denied.

Mr. McDonough: May I respectfully except.

(Following proceedings had in open court)

(Mr. McDonough sums up in behalf of defendant).

(Mr. Henderson sums up in behalf of Government).

[fol. 1246]

CHARGE OF THE COURT

Members of the Jury: This case involves the prosecution of this defendant, John Noto, for a violation of what is commonly called the Smith Act. That act provides that

whoever organizes or helps or attempts to organize any society, group, or assembly of persons who teach, advocate or encourage the overthrow or destruction of the Government of the United States by force or violence, or—and this is the important part as far as this case is concerned—or becomes, or is a member of, or affiliates with any such or assembly of persons, knowing the purpose thereof shall be subject to the punishment provided by the Statute. This case falls into that classification of alleged violation of this Statute commonly referred to as a membership case, because membership with guilty knowledge and intent is the gist of the charge.

The indictment was returned by the Grand Jury on November 8, 1954. It charges that from and after a certain [fol. 1247] date named in the indictment up to the filing of the indictment, the Communist Party of the United States was a society, group, and assembly of persons who teach and advocate the overthrow and destruction of the Government of the United States by force and violence as speedily as circumstances would permit, and that on and after that same date named in the indictment, the defendant John Noto was a member of the Communist Party of the United States with knowledge that the Communist Party of the United States was a society, group and assembly of persons who teach and advocate the overthrow of the Government of the United States by force and violence as speedily as circumstances would permit, and that the defendant, Noto, intended to bring about such overthrow by force and violence as soon as circumstances would permit.

Now, in every criminal statute there are certain elements ascertainable from the statute itself which, taken together, [fol. 1248] constitute the crime defined by the statute. So, we come to examine the elements of the crime charged by this indictment. There are four elements of the crime charged in the indictment.

1. The Communist Party of the United States is a group which teaches and advocates the overthrow of the Government of the United States by force and violence as speedily as circumstances will permit.

2. The defendant was a member of the Communist Party of the United States.

3. That while a member he had knowledge that the party then taught and advocated the overthrow and destruction of the Government of the United States by force and violence as soon as circumstances would permit.

4. That he himself intended to bring about the overthrow and destruction of the Government of the United States by force and violence as soon as circumstances would permit.

To warrant a conviction of this defendant all four elements must be established by the evidence. These four [fol. 1249] elements of the charge must all be proved to warrant a conviction. The failure to establish any one of the four elements is fatal to the case and must result in an acquittal.

In any criminal prosecution there is applicable what is known as the Statute of Limitations, which means that to warrant a conviction the criminal acts charged by the indictment must occur within a certain period prior to the time when the indictment is filed. You have perhaps often heard it said, or have read it in the public press, that certain acts under discussion were outlawed, meaning that because of the lapse of time, such acts could not form the basis for criminal prosecution. That is an illustration of the operation or application of the Statute of Limitations. In this case the criminal acts covered by the four elements charged in the indictment must have occurred between September 1, 1951, and November 8, 1954 when the indictment [fol. 1250] was filed. That is a period of about three years and two months. Those dates are fixed by virtue of the application of the Statute of Limitations. They are crucial and critical dates, because unless the proof establishes that all of the criminal acts covered by the four elements of the indictment occurred within that period, which I shall refer to as the period covered by the indictment, there can be no conviction.

Now, it will probably occur to you immediately that if that is so, why have we sat here listening to activities and teachings of the Communist Party, and activities of the defendant, as far back at least as the early thirties? The answer is this. The government has the burden of establishing the basic aims of the Communist Party as advocating the forceful and violent overthrow and destruction of

our form of government as speedily as circumstances would permit, during the period covered by the indictment, and [fol. 1251] knowledge by the defendant during the period covered by the indictment of such basic aims and the intent to participate in them during the period covered by the indictment. When guilty knowledge and intent are issues for determination in a criminal proceeding, it is permissible for the trial judge to permit proof of acts and circumstances which occurred prior to the period covered by the indictment, because such acts and circumstances during the period prior to that covered by the indictment may serve to throw some light on the defendant's knowledge and intent, and may aid the jury in determining whether, during the latter period covered by the indictment, that is, commencing September 1, 1951, the Communist Party then was a group which advocated the forceful and violent overthrow of our Government as soon as circumstances would permit, and whether during the period after September 1, 1951 and up to November 8, 1954, the defendant Noto was a member of the party with the knowledge that [fol. 1252] it then advocated forceful and violent overthrow of our Government and that he himself then intended to participate in such forceful and violent overthrow and destruction. You should continually bear in mind during your deliberations the purpose of allowing such proof during the earlier period, and should continually remember that the ultimate question for your determination is whether the criminal acts including guilty knowledge and intent charged by the indictment occurred between September 1, 1951 and November 8, 1954. If they did not even though they may have occurred prior to September 1, 1951, there can be no conviction.

In the orderly consideration of the case the first question for your consideration will be whether, between September 1st, 1951 and November 8th, 1954, the Communist Party of the United States was a group or society which was teaching and advocating the overthrow and destruction of the United States Government by force and violence as [fol. 1253] speedily as circumstances would permit. The purpose of the government's proof on this phase of the case was to show, and the government's proof tended to shew, that throughout the years beginning in the early

thirties, classes were conducted under the auspices of the Communist Party which taught the party members that the Communist Party was a revolutionary party, following the Marxist-Leninist line, and that this meant an overthrow and destruction of the capitalistic system and a substitution of the proletarian dictatorship, by whatever means were available, and by resort to force and violence if that course was called for by the circumstances. This was sought to be established mainly by the witness Lautner who taught classes in the Communist school, and who told of the basic Communist literature which formed the basis for the instruction of party members, and which the party members were advised to study.

Lautner was one of the leaders of the United States Communist Party prior to his leaving the party in 1950. It was his opinion based on his experience with the Communist Party of the United States that the ultimate aim of the Communist Party in this country was to destroy capitalism, given certain favorable conditions, and that this aim would be achieved by force, according to their teaching, if that course became necessary.

The Communist literature which formed the basis of Communist teaching, according to Lautner, taught that peaceful transition to socialism was impossible and that the aim of the party to establish proletarian dictatorship could only be accomplished by forceful overthrow of existing social conditions, that a violent revolution was inevitable, and that the abolition of bourgeois power was impossible otherwise.

Many documents, newspapers, books and periodicals were introduced in evidence by the government as its proof that the advocated revolution by which the party intended [fol. 1255] to establish the Proletarian Dictatorship, was a revolution by force and violence, if that became necessary. The government evidence tended to establish that this was the aim and avowed purpose of the Communist Party of the United States continuously from the early thirties down to and including the period covered by the indictment, with the exception of the temporary period of Browder's Revisionism around 1944 and 1945, which was in turn rejected by the 1945 convention, which directed a re-

turn to the Marxist-Leninist line of teaching. There were, of course, several other witnesses besides Lautner.

The defendant's proof consisted mainly of books and periodicals, which the defendant contends establish that the use of force and violence was not contemplated by the Communist Party to accomplish its aims. This contention was based principally on the more modern writings of William Z. Foster, who, the defendant says is the leading authority on the subject.

[fol. 1256] I have said that the government's proof tended to establish that the Communist Party advocated a revolution by force and violence, if necessary. Whether it did establish it or not is for you to determine from the proof in the case.

It is not unlawful for a person or group of persons to believe or to teach that the Government of the United States should be completely changed. It is not unlawful to publicly advocate and urge a complete change in the government by peaceful and constitutional means. It is not unlawful to criticize the United States Government or its institutions or policies, nor is it unlawful to praise the policies of foreign nations, even Soviet States. Nor is it unlawful to advocate and teach, even publicly, that, should a change in the form of our government come about by peaceful and constitutional means, that the newly formed government would have a right to protect itself against [fol. 1257] any other change, except by peaceful and constitutional means. The term "revolution" does not necessarily mean a change of government or a change of institutions by forceful and violent means. A revolution could conceivably come about by peaceful advocacy. It only becomes unlawful when force and violence are urged as a means to accomplish its aims.

It is not unlawful to teach that the Communist Party founded by Marx and Lenin actually did advocate force and violence as a means to accomplish the aim of the party at that time. That would be merely teaching what was considered by the teacher to be a fact, and that is not unlawful. There are many lawful groups who study and discuss, for instance, the Communist Manifesto by Marx and Engels. Indeed, it is one of the works prescribed for study by the well-known "Great Books Foundation." It is studied as

literature and history. It is entirely lawful to teach that Marx and Engels advocated a revolution by force and violence. But it becomes unlawful when persons are urged to [fol. 1258] action to overthrow by force and violence the Government of the United States when the time becomes appropriate. It is the use of language reasonably calculated to incite persons to action at the advantageous time to use force and violence to overthrow or destroy the United States Government that is made unlawful by statute. To be unlawful there need not be, in fact, any action constituting force or violence. It is enough, to make it unlawful, if violent or forceable action is urged, to be taken when circumstances may prove favorable. Unless you are satisfied on the evidence in the case that the Communist Party of the United States, between September 1st, 1951 and November 8th, 1954, was a group or society which then taught and advocated the overthrow of the Government of the United States by force and violence as soon as circumstances would permit, then there could be no conviction of this defendant, and it would then be unnecessary to consider the other three elements of the crime charged.

The second element for consideration is whether the defendant was a member of the Communist Party between September 1, 1951 and November 8, 1954. There is no dispute about this, so it needs no comment from me.

The third matter for your consideration is whether Noto knew, when he was a member of the Communist Party between September 1, 1951, and November 8, 1954, that the Communist Party was then teaching and advocating the overthrow and destruction of the United States Government by force and violence, when conditions became favorable. The question is not whether he should have known, if he had been more alert and had studied the basic literature on which the Communist teaching of force and violence was grounded, that the Party advocated the use of force and violence when necessary to achieve its aims. The question is rather whether he actually did know [fol. 1260] that the Party taught and advocated the use of force and violence, when that became necessary. Knowledge is a state of mind and is personal to the defendant. It is susceptible of proof either by direct evidence, or by

inferences to be drawn from direct evidence, if the inferences naturally and reasonably flow from direct evidence in this case.

The fourth matter for your consideration is the question whether the defendant himself intended to bring about the overthrow and destruction of the Government of the United States by force and violence as soon as circumstances would permit, assuming that you have already found that he knew that to be the basic aim of the Communist Party, of which he was a member. Intent is also a state of mind and personal to the defendant, and thus is susceptible of proof either by direct evidence or by inferences reasonably and naturally supported by some direct proof in the case.

On the question of knowledge and intent it is proper to consider the defendant's background, his education, his words and actions, his activities in the Party and the positions he held in the Party, both before September 1, 1951 and after that date and up to November 8, 1954, all for the purpose of ascertaining whether he had the necessary and criminal knowledge and intent between September 1, 1951 and November 8, 1954, the period covered by the indictment.

It was not unlawful during the period covered by the indictment to hold membership or office in the Communist Party, nor was it unlawful in and of itself, without more, to attend and to speak at Communist Party meetings, to teach in Communist Party schools and to write for Communist Party publications, or to read or discuss party books and publications. In addition to those things guilty knowledge and intent would have to be present to make it criminal.

The Communist Party is not on trial in this case, nor is the theory of Communism. Your findings in this case [fol. 1262] must not be based on your dislike of the Communist Party, if you have such dislike, nor its teachings, but upon the evidence in the case, and whether that evidence has established the four necessary elements of the charge, as I have outlined them for you.

You may not use testimony as to statements made by other persons as evidence against the defendant merely because such other persons were members of the Communist Party. The law does not make a member of the

Communist Party responsible for the acts or statements of any other member merely because of their common membership in the Communist Party.

The mere fact the defendant used a particular book or periodical on Communism, or discussed such book or periodical, standing by itself, and without more, cannot be taken as proof that he agreed with or approved any particular statements contained therein, or as proof that he had knowledge of the teaching and advocacy of any other [fol. 1263] person with reference to such book or periodical. More than that is required, namely criminal knowledge and intent as I have heretofore discussed them.

I have told you the four elements of the crime charged in the indictment, and the necessity of establishing all four elements during the period September 1, 1951 and 1951 and November 8, 1954. The burden is on the Government to establish all four of the elements beyond a reasonable doubt. Mere suspicion or probability, however strong, is not enough to convict. A reasonable doubt is one that appeals to one's reasoning power, or to one's power of logic, as distinguished from a doubt that appeals to some emotion, such as whim, or fancy, or caprice. If after a consideration of all the evidence in the case you are left with a reasonable doubt as to the guilt of the defendant, it would be your duty to acquit the defendant. If, on the other hand, you believe the Government has established all four elements of the crime, beyond a reasonable doubt, [fol. 1264] it is equally your duty to find him guilty. There are other equally proper ways of defining the test of reasonable doubt. One is that the evidence of guilt must be so conclusive as to exclude every other reasonable theory or hypothesis. Another is that the proof must be such as to satisfy you to that degree of certainty that you could truthfully say that you are morally certain of his guilt.

The indictment is no evidence whatsoever of guilt. That is no more than the means under our system of law by which a defendant is exactly apprised of the charge against him, so that he may formulate his defense.

You are the sole judges of the credibility or believability of the witnesses who have appeared before you. In determining the credibility of the witnesses and in determining

what weight should be given to their testimony, it is proper to consider whether the witness has any probable motive for being untruthful or for coloring his or her testimony. [fol. 1265] If you believe that any witness has intentionally testified falsely in regard to some material aspect of the case, you may, if you choose, disregard and reject the testimony of that witness entirely. That is entirely up to you.

Under our system of law a defendant is presumed to be innocent of the charges against him, and that presumption remains with him until it is overcome by evidence which establishes guilt beyond a reasonable doubt.

I have told you that the Government has the burden of establishing guilt beyond a reasonable doubt. That burden remains with the Government until the very conclusion of the case. It never shifts to the defendant. As a necessary supplement to that, I say to you that the defendant has no duty to take the stand as a witness in his own behalf to establish his innocence, and his failure to take the stand must not be used by the jury as establishing any inference of guilt.

[fol. 1266] In discussing this case I have at times referred to the evidence in the case. My recital or reference to the evidence is based only on my own recollection of the evidence as aided by my notes. You are not bound by my version of what the evidence was. If my version differs from yours, you should rely on your version, not mine. If I have indicated to you in any way my own view as to what the evidence established, you should disregard it, because you and you alone are the sole judges of the facts. You take from the Court only the law and apply it to the facts as you find them.

Verdicts in this Court are required to be unanimous.

You may take all the exhibits to the jury room.

Mr. Henderson: The Government has no requests.

Mr. McDonough: The defendant has no requests.

The Court: You have submitted a great many in writing.

Mr. McDonough: Would your Honor like me to request them orally?

[fol. 1267]. The Court: I told you how I would hold on all of your requests. I have considered all of them. If you think I should — them specifically I will.

REQUESTS AND EXCEPTIONS

Mr. McDonough: I request the Court to charge No. 1.

The Court: I will charge it. The guilty or innocence of the defendant is to be determined only upon the evidence presented in open court. The jury may not arrive at a verdict based upon prejudice or based upon any articles which have appeared in any newspaper or other publication or which the jury may have heard or seen upon radio or television broadcast which has not been received as evidence in the case. The jury's verdict must not be based upon personal opinions or prejudice with respect to the Communist Party or Communism.

Mr. McDonough: I request the court to charge No. 2.

The Court: Denial by the Court of the defendant's motions to dismiss the indictment and for a judgment of acquittal must not be taken by the jury as indicating any opinion by the Court as to the defendant's guilt or [fol. 1268] innocence.

Mr. McDonough: I request the Court to supplement its main charge, paragraphs 5, 6 and 7.

The Court: Direct evidence is evidence by which a fact is proven directly without inference from other facts and is usually given by witnesses who saw, heard or otherwise observed a particular fact or occurrence. Circumstantial evidence is evidence by which an inference of an unknown fact is drawn from the circumstances of known facts. Circumstantial evidence in a criminal case is the proof of such facts and circumstances connected with or concerning the commission of the alleged crime charged as tending to show the guilt or innocence of the party charged.

In order to convict the defendant on circumstantial evidence, the circumstantial evidence which is relied on must exclude to a moral certainty every other hypotheses except that of guilt. If all the circumstances taken together are consistent with any reasonable hypothesis which includes [fol. 1269] the innocence of the defendant, the government has not proved the defendant's guilt beyond a reasonable doubt and the jury must acquit him. On the other hand if all of the circumstances established by the evidence in this case taken together convince the jury beyond a reasonable doubt of the defendant's guilt in accordance with these

instructions it would be the duty of the jury to find the defendant guilty.

In a criminal case where there are two theories under which the evidence can be reasonably explained, one of guilt and one of innocence, it is the jury's duty to lean to the innocent consideration and to find the defendant not guilty, because the rule of law is that the defendant is presumed to be innocent and this presumption as a matter of law rests and abides with the defendant throughout his trial and during the jury's deliberations and therefore if the evidence in this case can as reasonably and consistently be explained upon the hypothesis of innocence as upon the hypothesis of guilt it is the jury's duty to give [fol. 1279] the defendant the favor or benefit of the doubt and find him not guilty.

[fol. 1271] Mr. McDonough: I ask the court to charge request No. 8.

The Court: The guilt or innocence of the defendant is not to be determined by the number of witnesses testifying or exhibits received in evidence, for either side. It is the quality of the proof, rather than the quantity of the proof which must be considered on the question of the defendant's guilt or innocence.

Mr. McDonough: I request the court to charge in the language request No. 9.

The Court: The jury may consider only that part of the evidence offered which the court has ruled admissible, or which has been admitted without objection. The jury must not consider any matter or testimony which the court has ordered stricken from the record. By admitting evidence, the court has not implied any opinion of the court as to the truth, credibility or weight of that evidence. When the court has sustained an objection to a question the jury must ignore that question, and may not draw inferences from its wording or guess as to what the witness would if allowed to answer.

[fol. 1272] The Court: The jury may consider only that part of the evidence offered which the Court has ruled admissible or which has been admitted without objection. The jury must not consider any matter or testimony which the Court has ordered stricken from the record. By admitting evidence, the Court has not implied any opinion of the

Court as to the truth, credibility, or weight of the evidence. When the Court has sustained an objection to a question the jury must ignore that question, and may not draw inferences from its wording or guess as to what the witness would have said if allowed to answer.

Mr. McDonough: I request the court to charge No. 10.

The Court: No. 10.—The jury must not consider any evidence in arriving at a verdict which it has heard, but which the court has afterward stricken from the record, nor should the jury consider any evidence which has been offered and which the court has refused to receive. The jury is to disregard all statements of witnesses which the court ordered stricken out, if any. Such statements are not evidence in [fol. 1273] the case and must not be considered by the jury. The jury should not draw any inference from the fact that attorneys in the case have objected during the progress of the trial to questions asked and answers made by witnesses. It is the right of the attorneys on either side to object to the introduction of the testimony. Such objections raise questions of law to be decided by the court only.

Mr. McDonough: I request the court to charge 18A.

The Court: 18(a). The defendant may not be convicted under this indictment merely because of the fact that he may have associated with other persons who violated the provisions of the same law, the violation of which is here charged against the defendant.

Mr. McDonough: I request the court to charge 20 and 21.

The Court: No. 20. In determining whether or not the defendant had the intent charged in the indictment, the jury cannot consider the testimony with reference to the acts or statements of any person other than the defendant himself unless it is satisfied from the evidence that such [fol. 1274] other person was speaking or acting for or on behalf of the defendant and with the defendant's knowledge and consent.

No. 21. If the jury comes to consider as bearing upon the knowledge or intent of the defendant a purported oral and unregarded statement which such defendant is reported to have made, and such report comes from only one witness, it should bear in mind that, even if the jury decides to believe that particular testimony, it is still very probable

that the witness did not testify as to the exact words used by the defendant and that it is very easy for the report of a listener, however honest, to distort the intent of the speaker. Since the defendant's knowledge and intent must be proved beyond a reasonable doubt, the jury should weigh these possibilities with care before concluding that such knowledge or intent has been shown by unrecorded words which have been filtered through the understanding and memory of another.

{fol. 1275} Mr. McDonough: I request the court to charge in the language requested in No. 27.

The Court: I decline to charge No. 27 as requested.

(Request No. 27 as follows: The Government has failed to prove the existence between September 1, 1951 and November 8, 1954, of a clear and present danger of a substantive evil which congress has a right to prevent, namely, the overthrow of the United States Government by force and violence so as to take away the defendant's constitutional rights of freedom of expression and opinion granted him by the First Amendment to the United States Constitution.)

Mr. McDonough: Upon denial of our request for 27, I now request your Honor to charge No. 28.

The Court: I decline to charge as requested in No. 28.

(No. 28 as follows: Before the defendant may be convicted, the jury must find as a matter of fact that between September 1, 1951 and November 8, 1954, there actually existed in the United States of America a clear and present danger of a substantive evil which Congress has a right to prevent, namely, the overthrow of the United States Government by force and violence, in order to justify the application of the statute under the First Amendment of the Constitution, so as to take away the defendant's constitutional right of free speech.)

Mr. Henderson: I have a request that you charge Government's request No. 1.

The Court: I decline to charge that.

Mr. Henderson: I have no further requests.

The Court: I dismiss the alternates in the case. You understand the necessity for that. I thank you for your kind attention to this case.

Mr. McDonough: I want to note on the record objection to the court's refusal to charge requests No. 27 and No. 28.

The Court: Yes.

[fols. 1279-1280] MOTION TO SET ASIDE VERDICT AND FOR A
NEW TRIAL AND DENIAL THEREOF

Mr. McDonough: If the Court please, the defendant moves to set aside the verdict of the jury and for a new trial on all the grounds stated in the Federal Rules of Criminal Procedure and on the ground that the jury's verdict is contrary to law and contrary to the weight of the evidence.

The Court: Motion denied. The jury is excused.

(Following proceedings without a jury)

The Court: I can sentence now.

Mr. McDonough: In view of the fact your Honor is going to impose sentence—

The Court: I don't feel a probation report would accomplish anything. I know pretty much from the F.B.I. report.

Mr. McDonough: I don't believe there is anything further I can say.

SENTENCE

The Court: I impose a sentence of five years. I anticipate it will be appealed.

[fol. 1280a] IN UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NEW YORK

Indictment No. 6457 C

UNITED STATES OF AMERICA

v.

JOHN FRANCIS NOTO

JUDGMENT AND COMMITMENT—April 12, 1956

It is adjudged that the defendant has been convicted upon a verdict of guilty on April 12, 1956 of the offense of being a member of an organization seeking to overthrow the Government of the United States by force and violence, in violation of Section 2385, Title 18, U.S.C. as charged¹ and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court.

It is adjudged that the defendant is guilty as charged and convicted.

It is adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of² five (5) years.

¹ Insert "by counsel" or "without counsel; the court advised the defendant of his right to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel."

² Insert (1) "guilty," (2) "not guilty, and a verdict of guilty," (3) "not guilty, and a finding of guilty," (4) "nolo contendere," as the case may be.

³ Insert "in counts(s) number" if required.

⁴ Enter (1) sentence or sentences, specifying counts if any; (2) whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of preceding term or to any

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

Harold P. Burke, United States District Judge.
May C. Sickmon, Clerk.

Declared E. Wood, Jr.

Approved: John O. Henderson, U.S. Attorney.

other outstanding or unserved sentence; (3) whether defendant is to be further imprisoned until payment of the fine or fine and costs, or until he is otherwise discharged as provided by law.

⁵ Enter any order with respect to suspension and probation.

⁶ For use of Court wishing to recommend a particular institution.

[fol. 1281] IN UNITED STATES COURT OF APPEALS FOR THE
SECOND CIRCUIT

No. 381

October Term, 1957

Argued June 11, 1958

Docket No. 25156

UNITED STATES OF AMERICA, Appellee,

v.

JOHN FRANCIS NOTO, Appellant

Before: HINCKS and WATERMAN, Circuit Judges and RYAN,
District Judge

Appeal from a judgment of conviction rendered in the United States District Court for the Western District of New York after a trial with a jury before Judge Burke. Affirmed.

CHARLES J. McDONOUGH, Buffalo, New York, Attorney for appellant.

JOHN O. HENDERSON, United States Attorney for the Western District of New York, Buffalo, N. Y. (Lawrence P. McGauley, John C. Keeney, and John J. Keating, Attorneys Department of Justice on the brief), for appellee.

[fol. 1282] OPINION—December 31, 1958

RYAN, District Judge:

This is an appeal from a judgment of conviction and sentence for violation of the membership provision of the Smith Act, 18 U. S. C. § 2385.* The indictment charged:

* The Statute provides:

“Whoever organizes or helps or attempts to organize any society, group or assembly of persons who teach, advocate or encourage the overthrow of any such government by force and violence; or becomes or is a member of, or affiliates with any such society, group or assembly of persons, knowing the purpose thereof—Shall be fined not more than \$10,000 or imprisoned not more than ten years, or both * * *.”

1. That from January 1946 up to November 1954 (the date of the filing of the indictment), the Communist Party has at all times been a group of persons who teach and advocate the forcible overthrow of the government of the United States as speedily as circumstances would permit;

2. That continuously from January 1946, the defendant has been a member of the Communist Party well knowing that it was a group that taught and advocated the forcible overthrow of the Government as speedily as circumstances would permit, and that defendant intended to bring about such overthrow by force and violence as speedily as circumstances would permit.

The appeal raises questions as to the sufficiency of the evidence, the constitutionality of the statute and the validity of the indictment in view of Section 4(f) of the Internal Security Act 1950, 50 U. S. C. 783(f). This case is one of first impression in this Circuit, although the Fourth and Seventh Circuits have upheld convictions under the membership clause. *Scales v. United States*, 227 F. 2d 581 (4th Cir., 1956) and #7637, October 6, 1958, certiorari granted December 18, 1958; *United States v. Lightfoot*, 228 F. 2d 861 (7th Circuit, 1956).**

[fol. 1283] The evidence presented must be viewed in the light of the trial court's charge to determine the questions raised as to sufficiency and constitutionality. The charge required the jury to make an affirmative finding on four elements before it could convict:

1. The Communist Party is a group which teaches and advocates the overthrow of the United States Government by force and violence as speedily as circumstances will permit;

2. The defendant was a member of the Communist Party of the United States;

** Both these cases were reversed by the Supreme Court, (335 U. S. 1 and 2) on the authority of *Jencks v. United States*, 353 U. S. 657, following which *Scales* was retried in February 1958 and the conviction again affirmed. Defendant here concedes that there is no *Jencks* question in this case.

3. While a member defendant had knowledge that the Party taught the forcible overthrow of the Government as soon as circumstances would permit;

4. Defendant individually intended to bring about the overthrow and destruction of the Government by force and violence as soon as circumstances would permit.

In addition, the jury was required to find that these four elements co-existed at some time between September 1, 1951 and November 8, 1954 the period covered by the Statute of Limitations (18 U. S. C. §3282 as amended September 1, 1954). If the evidence was sufficient to justify the jury's findings on the four elements this will dispose of appellant's challenge to the evidence. We hold that the jury's verdict was supported by the proof on trial.

The nature of the Communist Party as a group which teaches and advocates the overthrow of the Government by force and violence as speedily as circumstances would permit was abundantly established much in the pattern we reviewed and affirmed in *United States v. Dennis*, 183 F. [fol. 1284] 2d 201, affd. 341 U.S. 494 (1951), and *United States v. Flynn*, 216 F. 2d 354. Thus, the systematic teaching in Party schools of the principles of Marxism-Leninism together with the so-called Communist "classics" were set forth for the jury. As to the "classics" appellant concedes in his brief that they "all predicted and advocated the eventual overthrow of capitalism by the revolution of the proletariat, to be accomplished by force and violence if necessary." The witness Lautner brought these teachings to the Party schools over a period of many years. That the Party equated the principles of Marxism-Leninism with force and violence was attested to further by its condemnation at the National Convention in 1945 of the "peaceful co-existence" policy of the American Communist Party under the leadership of Browder, described by the Party as a "rejection of the Marxian concept of the revolutionary initiative of the working class," and the reconstitution of the Party and reeducation of its members along lines of Marxist orthodoxy. It would serve no useful purpose for us here to review in detail the many documents, books and periodicals before the jury which established and justified a finding that the aims and avowed purposes of

the Party was one of dedication to the revolutionary Marxist-Leninist line.

In addition, there was proof of the Party's plan of industrial concentration by which the Party's activities were concentrated in basic industries and the largest plants and key national figures shifted into the leadership of these concentration districts and areas, thereby attempting to give the Party the power to paralyze the nation's industrial capacity, in furtherance of its ultimate aim. Then, too, there was proof that in 1948 the overt call to forcible overthrow espoused at the Convention was changed because of the Smith Act prosecution of its top leaders, and that consultations were had with European Communist leaders and [fol. 1285] preparations made based on international experience to take the hard core members of the Party underground, and place them in trade unions and mass organizations. This move was designed to enable the Party—which in time of prosecution suffered a 90% reduction in membership—to function as an organized group under any and all conditions through absolutely loyal members unconditionally dedicated to and particularly suited to carrying out the Party's objectives. There was evidence that as late as Labor Day in 1951, within the indictment period, the defendant as one of those members stated that he was waiting for instructions from his superiors as to what he should do if apprehended, that he might find it necessary to flee the country and that he was willing to endure any hardship and even lay down his life if necessary in order that the work of the Party might continue. When defendant disappeared into the employ of one of the basic industries, in disguise and under a false name, it was reasonable for the jury to infer that his move had been dictated by his superiors in the interests of the Party.

The sum of these activities when viewed against the background of the systematic teaching of Marxism-Leninism, the program adopted in 1945, the rigidity of purpose of the Party and the tenacity of the hard core members despite prosecution, and the absence of any evidence of accomplishment or abandonment of their purpose was sufficient basis to support an inference that the character of the Party as a group dedicated to the violent overthrow

of the Government, established in prior years, continued unaltered through the statutory period. *United States v. Schneiderman*, 106 F. Supp. 892, 899; 2 Wigmore on Evidence § 437, 3rd, 1940.*

[fol. 1286] There is no dispute in this case as to the second element; this is conceded in appellant's brief: "there was no question about Noto's membership in the Communist Party." He was a paid employee and organizer. His income tax return for the year 1951 showed him to be employed as a sub-district organizer and the Party's withholding tax return for the third quarter ending September 31, 1951 and dated October 18, 1951, signed by the defendant as Chairman of the Party showed him to be a paid employee.

The third element, defendant's knowledge of the Party's illegal teaching and advocacy, and the fourth element his intent were also amply supported by proof which justified the jury's finding. Defendant states in his brief "the Government proved that the defendant was extremely active in the affairs of the Party in Buffalo and Western New York." He was a well indoctrinated member having been taught in Party schools the Marxist-Leninist principles by use of the Communist "classes." These, as we mentioned above, were the same source materials to which we adverted in the *Dennis* case as proving the prosecution's contention of force and violence "quite independently of the testimony of its witnesses." * * * 183 F. 2d at 206.

Defendant had occupied positions of importance in the Party; he had been the Greater Buffalo region organizer in 1947, the sub-district organizer of Western New York in 1947-48; Chairman of the Erie County Communist Party and District Chairman of the Party Upstate District. He lectured in these capacities at various meetings on the classical aims and objectives of the Party and apparently

* When the existence of an object, condition, quality or tendency at a given time is in issue, the prior existence of it is in human experience some indication of its probable persistence or continuance at a later period. The degree of probability of this continuance depends on the chances of intervening circumstances having occurred to bring the existence to an end.

considered himself sufficiently well versed in the Party's [fol. 1287] objectives to predict the time when capitalism would be destroyed and the Government overthrown. In the Fall of 1951 when he was endeavoring to induce Regan, a fellow member, to become active in the Party, he stated that he would stand behind the actions of a particular leader (Ellis) as one who represented Communist Party Policy; that he was familiar enough with the Party's tactics to anticipate that he might be directed to submit to arrest, be bailed out and then jump his bail. In October, 1951 he picked up copies of the Daily Worker at Regan's house; on September 15 or 17th he collected money toward furnishing bail to arrested leaders. Defendant actively participated in the industrial concentration program pointing out the steel industry in his area as the prime Party target. Considering the ultimate Marxist-Leninist goal, concentration on the industry which is probably the most important to the Country's economy suggests the attempt to gain for the Party the ability to sabotage and paralyze the entire nation—a coup vital to the Party's objective to attack when the time was ripe. He assisted the concentration program of getting undercover Communists into key shops and departments within the automobile industry. The jury could well have concluded from these activities that defendant was intent upon the ultimate Marxist-Leninist purpose of forceful overthrow by aiding in the proximate task of industrial concentration: *Silverman v. United States*, 248 F. 2d 671, 685-6 (2nd Cir.).

But it was in the area of the Party's underground apparatus that defendant was particularly active. The witness Lantner was charged by the Party with activating the underground. In this capacity he met with the defendant as one of the three top Party men in the Buffalo area. Defendant was placed in charge of the underground work in all New York State north of Poughkeepsie. Defendant participated in obtaining and secreting machines for printing [fol. 1288] Party material. He instructed Party subordinates to meet secretly with other Party officials under assumed names. He was awaiting instructions from his superiors and expressed a willingness to follow instructions to leave the Country and even "lay down his life," if necessary, thus emphasizing the unswerving loyalty and

devotion exacted of those which made up the elite 10% segment of the underground. Thereafter, he disguised his appearance by growing a mustache and cutting his hair short in order to conceal his identity. He also located homes in which to hide Party members and Party equipment and collected funds to help them. He further cloaked his identity by going to work from 1953 to 1954 in a plant in Newark, N. J. under an alias with a false Social Security number.

While it is true that, apart from the specific instances mentioned, most of the direct evidence of defendant's activities related to a period prior to September, 1951, it provided adequate basis for inferring that his knowledge, intent and responsibility to the Party in carrying out its purposes continued through the following years, since "the running of the statute of limitations cannot empty a man's mind of knowledge of this sort." *Scales v. United States*, 227 F. 2d 581, 591; *United States v. Mesarosh*, 223 F. 2d 449; *United States v. Schneiderman*, 106 F. Supp. 892.

We conclude that the Government proved by sufficient evidence that the defendant was an active member in an organization teaching and advocating the violent overthrow of the Government well knowing the aim and purpose of the Party and with intent to achieve its illegal purpose.

We turn now to consider the defendant's argument against the constitutionality of the membership clause of the Smith Act. Two arguments are raised: (1) the statute fails to include intent as an element of the offense and (2) it imputes guilt solely by association. Under the first, defendant urges that the prosecution fell into error by [fol. 1289] "gratuitously adding to the charge" the further charge "and said defendant intending to bring about such overthrow by force and violence as speedily as circumstances would permit." His argument goes on to assert that the membership clause of the statute "does not require proof of advocacy, teaching or organization by the defendant, or proof of any overt act by the defendant." Since no intent is implicit in membership, defendant says, the statute penalizes membership without proof of personal intent to overthrow the Government by violence, thereby violating the rights of free speech and assembly in the

First Amendment as well as due process guaranteed by the Fifth Amendment.

There is no doubt that the membership as well as the advocacy clause limits rights of free speech and assembly guaranteed by the First Amendment. These rights however are not absolute and "were not intended to give immunity for every possible use of language." *Dennis v. United States*, 341 U. S. 494, at 534, quoting *Frohwerk v. United States*, 249 U. S. 204, 206 (concurring opinion of Mr. Justice Frankfurter). The constitutionality of the infringement must be determined by weighing against it the need for protection to our form of government. In other words, the infringement must be justified by the necessity of this type of protection to the government and this in turn must be decided by the particular activity sought to be punished or forbidden. Does the activity proscribed present an effective means of bringing about or does it create a clear and present danger that the undesirable result—the violent overthrow of the Government—will be brought about?

While we agree that the membership clause does not require proof of advocacy, we do not agree that it does not require proof of intent on the part of the member to bring about the violent overthrow and that it penalizes membership *per se*. Although the statute does not spell out the element of intent, the knowledge of purpose which it does [fol. 1290] literally require before a conviction may be had is that kind of knowledge from which, if established, it may or must be said that intent inescapably follows. In *Dennis, supra*, the Supreme Court imputed into the Smith Act "as an essential element of the crime proof of intent of those who are charged with its violation to overthrow the Government," and while the charge before it was on the advocacy clause the Court did not limit its examination of the Act and conclusion as to its validity, to that clause but held that:

"The structure and purpose of the statute demand the inclusion of intent as an element of the crime. Congress was concerned with those who advocate and organize for the overthrow of the Government. Certainly, those who recruit and combine for the purpose

of advocating overthrow intend to bring about overthrow" (p. 499).

That knowing membership in the Communist Party warrants inferences of personal intent and guilt was frankly recognized by Mr. Justice Jackson, in *American Communications Association v. Douds*, 339 U.S. 382, 432, when he wrote (concurring and dissenting opinion):

"Membership in the Communist Party is totally different [from membership in lawful political parties.] The Party is a secret conclave. Members are admitted only upon acceptance as reliable and after indoctrination in its policies, to which the member is fully committed. They are provided with cards or credentials, usually issued under false names so that the identification can only be made by officers of the Party who hold the code. Moreover, each pledges unconditional obedience to party authority. Adherents are known by secret or code names. They constitute 'cells' in the factory, the office, the political society, or the labor union. For [fol. 1291] any deviation from the party line they are purged and excluded.

"Inferences from membership in such an organization are justifiably different from those to be drawn from membership in the usual type of political party. Individuals who assume such obligations are chargeable, on ordinary conspiracy principles, with responsibility for and participation in all that makes up the Party's program."

An argument similar to that here raised was rejected both by the Fourth and Seventh Circuits in the *Scales* and *Lightfoot* cases, *supra*. The Fourth Circuit equated the act of knowing membership for the purposes of imputing intent with an act of knowingly joining a conspiracy to overthrow the Government and held in the second opinion that on the issue of constitutionality the distinction was without significance:

"It is too clear for argument that membership in an organization with knowledge of its purposes and intent to make them effective is a joint rather than an individual undertaking which gathers its strength from an

association or group of individuals inspired by a common purpose." (No. 7637, slip opinion October 6, 1958, p. 7.)

The indictment charged and the jury was required to find intent, as all "membership" cases have so far; this was not under our interpretation of the statute a capricious addition to the charge for requiring criminal intent is the normal course rather than the exception in our jurisprudence. As *Dennis* establishes, Congress could constitutionally make criminal the teaching and advocacy of the violent overthrow of the Government. We think it follows that it could also proscribe high level, active membership unremittingly devoted and pledged to the accomplishment of that end.

The second constitutional argument raised by defendant is that the membership clause imputed guilt solely by association. This argument is a corollary of defendant's further contention that prosecution under the membership clause was barred by Section 4(f) of the Internal Security Act of 1950.* The identical argument was raised and disposed of in *Scales* and *Lightfoot, supra*, and we agree with its disposition.

The answer to defendant's contention is, as we have just discussed, that the membership clause does not punish membership *per se*; the additional requirements of knowledge of the criminal purpose of the group and intent to carry out that purpose take this prosecution out of the infirmities which defendant fears. Under this clause of the Act it is not association with tolerance of the activities and aims of the other members which is forbidden, even if it be true that the mere fact of membership gives aid and encouragement to the group, but personal desire and dedication, with full knowledge and awareness, to bring the end to fruition. The guilt must be personal and independent; it may not be vicariously imputed in order to convict under the clause. Moreover, the legislative history of the Internal

* That statute provides: "Neither the holding of office nor membership in any Communist organization by any person shall constitute *per se* a violation of subsections (a) or (c) of this section or of any other criminal statute."

Security Act shows no evidence that Congress envisioned much less intended a bar to membership prosecutions under the Smith Act. 96 Cong. Rec. 15198, 14190. Indeed Section 4(f) was enacted by Congress to preserve the constitutionality of the registration provisions in the Internal Security Act and Congress expressly stated in Section 17 (50 U. S. C. 796):

[fol. 1293] "The foregoing provisions of this title shall be construed as being in addition to and not in modification of existing criminal statutes.

As we have said we need not here speculate and attempt to resolve subtle distinctions in the case of one who may innocently have joined the Party for some Utopian idea because this defendant was shown to be a leader steeped in Party discipline and dedicated to its objectives. Clearly this is not a prosecution of membership *per se* but of membership with knowledge and criminal intent.

Defendant complains that the trial court failed to make a finding that a clear and present danger existed of violent overthrow of the Government. This element, as the Supreme Court ruled in *Dennis* is a question for the trial court to determine for itself. 341 U. S. 410. What we said in *United States v. Flynn supra*, disposes of this issue. The factors considered by the trial court and affirmed by us in the latter case were applicable to this case. Indeed, the indictment periods in this case and in *Flynn* were overlapping. During much of the period from September 1951 to November 1954, "The Korean conflict was raging and our relations with the Communist world had moved from cold to hot war" * * * (216 F. 2d 367).

The trial court properly declined defendant's requested charges (1) that the Government failed to prove a clear and present danger of forcible overthrow of the Government and (2) that the jury must find a clear and present danger before it could convict. As both *Dennis* and *Flynn* make explicitly clear this is a question for the court and not the jury. By declining the requested charges and submitting the case to the jury on the four elements we have discussed the trial judge implicitly found the existence of a clear and present danger. We agree that it did exist.

This case does not confront the Court with the prosecution of a leader, organizer or teacher of the Communist [fol. 1294] Party charged during the indictment period with advocating and teaching the duty and necessity of overthrowing the Government by force and violence or of organizing a society to so advocate. Consequently the incitement to action test enunciated in *Yates v. United States*, 354 U. S. 298 and applied by us in *Silverman, supra* and *United States v. Jackson*, 257 F. 2d 830 is inapplicable. The crime for which appellant was indicted, brought to trial and convicted is what determines the sufficiency of the evidence and not another similar, even related, crime. The clauses of the Act are disjunctive and quite separable, and as appellant concedes or maintains there is no requirement that a member or affiliate be shown to have been advocate, teacher or organizer. True it is that this defendant was very likely all three, prior to his going underground, but he was not indicted for pre-underground activities or for teaching and advocating. Proof of these activities was offered and very properly considered by the jury as evidence bearing on his knowledge and intent during the statutory years when he was charged with being a member.

That the words of the statute defining the particular activity proscribed are to be carefully considered and their meaning strictly adhered to was made clear in *Yates*. There the Court went into a careful analysis of the exact meaning of the word "organize" and reversed that part of the indictment which so charged concluding that the activities of the defendant during the statutory period although termed "organizational" corresponded more to the carrying on of an existing body than to the literal meaning of the word — the creating of such body.

"... we find nothing which suggests that the 'organizing' provision was intended to reach beyond this, that is, to embrace the activities of those concerned with carrying on the affairs of an already existing organization. Such activities were already amply covered [fol. 1295] by other provisions of the Act, such as the 'membership' clause, and the basic prohibition of 'advocacy' in conjunction with the conspiracy provision, and there is thus no need to stretch the 'organizing' provision to fill any gaps in the statute" (308).

Similarly with respect to the words "teach" and "advocate" it found a consciousness on the part of Congress, in enacting the statute, that these words had been in the past construed as terms of art carrying a special and limited connotation. As defendant points out Congress should not be deemed to have used language which was redundant or mere surplusage and the terms "conspiracy, organization, advocacy, teaching and knowing membership" were all specifically, separately and disjunctively enumerated as violations of the Act" (appellant's brief).

The distinction lies in the fact that in the "advocacy" clause it is the act of producing a state of mind in another which is forbidden, *i. e.* a "stirring of people to action" a "call to action" as distinguished from mere "teaching with evil intent." *Yates, supra.* Under the "membership" clause it is the person's own intent to overthrow the Government coupled with activity on his part to achieve the end which is aimed at. Since defendant was not indicted for activities the end result of which were to culminate in action on the part of others, it was not necessary that the evidence of his activities meet the *Yates* test. Upon sufficient proof all four elements of the crime charged in the indictment were submitted under a proper charge to the jury which found the defendant guilty.

The conviction is affirmed.

[fol. 1296] IN UNITED STATES COURT OF APPEALS FOR THE
SECOND CIRCUIT

Present: Hon. Carrol C. Hincks, Hon. Sterry R. Waterman, Circuit Judges; Hon. Sylvester J. Ryan, District Judge.

UNITED STATES OF AMERICA, Plaintiff-Appellee,

v.

JUDGMENT—December 31, 1958

Appeal from the United States District Court for the Western District of New York

This cause came on to be heard on the transcript of record from the United States District Court for the Western District of New York, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed.

A. Daniel Fusaro, Clerk.

[fol. 1297] [File endorsement omitted.]

[fol. 1298] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 1299] SUPREME COURT OF THE UNITED STATES, OCTOBER
TERM, 1959

No. 4 Misc.

JOHN FRANCIS NOTO, Petitioner,

VS.

UNITED STATES OF AMERICA

On Petition for Writ of Certiorari to the United States
Court of Appeals for the Second Circuit

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA
PAUPERIS AND GRANTING PETITION FOR WRIT OF CERTI-
ORARI—October 12, 1959

On consideration of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby granted; and that the petition for writ of certiorari be, and the same is hereby granted. The case is transferred to the appellate docket as No. 464 and set for argument immediately following No. 8.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

Office-Supreme Court, U.S.

FILED

JAN 23 1958

JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

October Term, 1958

No. ~~564~~ **MISC.** 9

JOHN FRANCIS NOTO,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
SECOND CIRCUIT**

JOHN J. ABT,
320 Broadway,
New York 7, N. Y.,
Attorney for Petitioner.

INDEX

	PAGE
Opinion Below	1
Jurisdiction	1
Questions Presented	2
Statutes Involved	2
Statement of the Case	2
Reasons for Granting the Writ	6
1. The misconstruction of the statute by the court below	6
2. The insufficiency of the evidence	7
3. The erroneous admission of evidence	8
4. Section 4(f) of the Internal Security Act as a bar to prosecution of the offense charged	9
5. The unconstitutionality of the membership clause on its face and as applied	10
Conclusion	11
Appendix A: Opinion Below	13
Appendix B: Statutes Involved	27

Cases

Dennis v. United States, 341 U. S. 494	7
Haywood v. United States, 268 F. 795	8
Jencks v. United States, 353 U. S. 657	2
Kammann v. United States, 259 F. 192	9
Langer v. United States, 76 F. 2d 817	8
Lightfoot v. United States, 355 U. S. 2	2, 10
Nowak v. United States, 356 U. S. 660	7
Scales v. United States, 355 U. S. 1	2, 10
Scales v. United States, No. 488, this Term	2, 9, 10

	PAGE
United States v. Dennis, 183 F. 2d 201	9
United States v. Jackson, 257 F. 2d 830	7
United States v. Silverman, 248 F. 2d 271	7
Wolf v. United States, 259 F. 388	8
Yates v. United States, 354 U. S. 298	2, 3, 6, 7

Constitution, Statutes, Etc.

First Amendment	7, 10
Fifth Amendment	7
18 U. S. C. 2385	1
18 U. S. C. 3500	2
28 U. S. C. 1254	1
50 U. S. C. 783(f)	2, 9
96 Cong. Rec.	9
Sen. Rep. No. 2369, Part 2, 81st Cong., 2d Sess.	9

IN THE
Supreme Court of the United States

October Term, 1958

No.

JOHN FRANCIS NOTO,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
SECOND CIRCUIT**

The petitioner, John Francis Noto, petitions that a writ of certiorari issue to review a judgment of the United States Court of Appeals for the Second Circuit which affirmed a judgment of the United States District Court for the Western District of New York convicting him after a jury trial and sentencing him to imprisonment for five years on a one count indictment charging violation of the so-called membership clause of the Smith Act, 54 Stat. 671, 18 U. S. C. 2385.

Opinion Below

The opinion of the court below (App. A, *infra*) has not yet been reported.

Jurisdiction

The judgment of the court below is dated and was entered on December 31, 1958. Jurisdiction of this Court is conferred by 28 U. S. C. 1254.

Questions Presented

1. Whether the court below erred in holding that the ~~incitement-to-action~~ test of advocacy enunciated in *Yates v. United States*, 354 U. S. 298, is inapplicable to a prosecution under the membership clause of the Smith Act.

2. Whether the evidence was sufficient to sustain the conviction.

3. Whether the conviction was based on evidence which should have been excluded as incompetent, irrelevant, remote and prejudicial.

4. Whether the immunity conferred by section 4(f) of the Internal Security Act (50 U. S. C. 783(f)) bars prosecution of the offense charged in the indictment.

5. Whether the membership clause of the Smith Act is unconstitutional on its face or as applied in this case.

Statutes Involved

The Smith Act and section 4(f) of the Internal Security Act are set out in Appendix B, *infra*.

Statement of the Case

All of the questions presented here with the exception of question 1 are likewise presented in *Scales v. United States*, No. 488 this Term, certiorari granted, December 15, 1958.¹ With the same exception, these questions were also presented in *Scales v. United States*, 355 U. S. 1, and *Lightfoot v. United States*, 355 U. S. 2, in which, after hearing argument, the Court reversed the convictions in consequence of the Solicitor General's confessions of error under *Jencks v. United States*, 353 U. S. 657.

¹ *Scales* raises additional questions not presented here. The Solicitor General consented to certiorari in that case except as to a question relating to the constitutionality of the *Jencks* statute, 18 U. S. C. 3500.

The indictment.

The indictment, returned November 8, 1954, charges (1) that since January, 1946, the Communist Party has been a group that teaches and advocates the violent overthrow of the government as speedily as circumstances would permit, and (2) that during the same period, the defendant has been a member of the Communist Party, well knowing that it advocates the foregoing doctrine and himself "intending to bring about such overthrow by force and violence as speedily as circumstances would permit."²

The evidence.

It was not disputed that petitioner was a member of the Communist Party and held various full-time positions in its New York organization during the period of the indictment.

The prosecution called ten witnesses. Lautner, its principal witness and a familiar figure in Smith Act trials, has been in the employ of the Department of Justice since his expulsion from the Communist Party in 1950. As in the *Yates* case, *supra*, Lautner recounted his career in the Party from 1929 to 1950, testified about numerous conversations, meetings and conventions in which he had participated and summarized what he had been taught and had himself taught in Party schools (R. 4-386).³ With the exception noted later, none of his testimony was connected with petitioner.

Also as in *Yates*, Lautner served as the vehicle for the introduction in evidence of a mass of Communist books and articles, many of which were likewise never connected with petitioner. Based on his knowledge of this literature and his Party experience, Lautner stated it to be his opinion

² The indictment will be found at p. 2 of the appendix to appellant's brief in the court below.

³ "R." designates the typewritten transcript of the trial proceedings.

that the "ultimate aim" of the Party is to destroy capitalism and establish socialism and that this objective "will be achieved by force, challenge and violence" (R. 383-85). This and his other testimony concerning Communist Party teaching and the literature introduced through him established, at most, that the Party advocated political violence as a matter of abstract doctrine. Cf. *Yates*, at 529.

Lautner's only significant contacts with petitioner occurred in 1949 when the former was engaged in setting up a so-called "underground" Party organization in New York. The witness testified that one of the purposes of this organization was to enable the Party to work for the restoration of its legal status in the event that it was outlawed as a result of Smith Act and other prosecutions and to provide printing and mimeographing equipment for use if commercial facilities became unavailable to it (R. 523-26). In connection with this work, Lautner had several conversations with petitioner about setting up an underground organization in the Buffalo area and arranged to supply him with a photo-offset press and mimeograph machines. (R. 332-43).

The witness Dietch, a former Communist, testified that in 1951 petitioner sought his help in the purchase of two small printing presses for use in the event that the Party was forced underground (R. 629-33). Another witness, Greenberg, also a former Communist, testified that in 1951 he stored some printing equipment in his house at Noto's request (R. 1015-19).

Three witnesses, Chatley, Regan and Hicks, all of whom had joined the Communist Party to spy on it at the request of the FBI (R. 681, 754, 853), testified to conversations with and speeches by petitioner between 1943 and 1951. If believed, their testimony establishes that Noto urged building the Communist Party among workers in the automobile, steel and electrical industries in the Buffalo area and was concerned with the security of the organization in the face

of Smith Act prosecutions and proceedings under the Internal Security Act. They pictured him as a disciplined and devoted Communist who believed in and predicted the victory of socialism in this country. (R. 692-717; 765-79; 868-99.) But their testimony is devoid of any statement by petitioner, or by anyone in his presence, advocating violent action, present or future, for the overthrow of the government.⁴

Regan testified that in 1951 petitioner grew a mustache and stated that he "was going under a disguise to conceal himself." When Regan saw petitioner for the last time a month later, he said that he had been doing a great deal of travelling and "had to be on the move" (R. 930-31).

The only testimony about petitioner subsequent to 1951 was given by the four remaining prosecution witnesses. They identified him as a man they had known in 1953-55 as Louis Paresi who had lived with his wife and daughter in New Jersey where he had been employed by the Good,ear Rubber Company (R. 988-91; 1037-40; 1042-43; 1060-62).

The witnesses for petitioner were a librarian who testified that many of the Communist books introduced in evidence were available at the public library (R. 1090-99) and an FBI agent who described the circumstances of petitioner's arrest in Buffalo (R. 1107).

The opinion below.

The trial court instructed the jury in substance that it could not convict unless it found that the advocacy of the Communist Party was reasonably calculated to incite persons to action for the violent overthrow of the government as soon as circumstances would permit (R. 1258). The government's brief below (pp. 2-3) acknowledged that the conviction was invalid unless the evidence of the advocacy of the Communist Party satisfied the incitement-to-action

⁴ This also appears from the summary of the evidence in the opinion below. (App. A, *infra*, pp. 17-19).

test of *Yates*. Nevertheless, the court below ruled that the *Yates* test is wholly inapplicable to a prosecution under the membership clause of the Smith Act (App. A, *infra*, pp. 24-26). Accordingly, it held that the evidence was sufficient to sustain the conviction. It also rejected petitioner's contentions that the membership clause is unconstitutional on its face and as applied and that section 4(f) of the Internal Security Act bars prosecution of the offense charged (App. A, *infra*, pp. 20-24).

Reasons for Granting the Writ

1. The misconstruction of the statute by the court below.

The court below held that the incitement-to-action test enunciated by *Yates, supra*, in reversing convictions for conspiracy to violate the advocacy provision of the Smith Act is inapplicable to prosecutions under the membership clause (App. A, *infra*, p. 24).⁵ By reading incitement out of the membership clause, the court dispensed with the necessity of proof (a) that the advocacy of the Communist Party took the form of inciting *action* for violent overthrow and (b) that the petitioner knew the advocacy of the organization to be of this character.

The court's construction of the statute is plainly erroneous. It appears to be based on the view that since the defendant in a membership case is not charged with *personal* advocacy of violent overthrow, the *Yates* test is wholly inapplicable. The court disregards the fact that the gravamen of the offense is membership in an *organization* which advocates violent overthrow. There is nothing in the statute or the legislative history which can possibly give one connotation to the advocacy of political violence when engaged in by an individual and quite another to advocacy of the same doctrine by a group. On the contrary,

⁵ The trial court gave an appropriate instruction on the issue of incitement (R. 1258).

Dennis v. United States, 341 U. S. 494, 502, 512, applied the incitement-to-action test to the offense of organizing a group which advocates violent overthrow. And see *Nowak v. United States*, 356 U. S. 660, 665, 667.

The construction of the membership clause below is not only contrary to *Dennis*, *Yates* and *Nowak* but raises the grave constitutional questions which *Yates* (at 319) found it unnecessary to reach. So construed, the statute authorizes a conviction for knowing membership in an organization which does no more than advocate belief in revolutionary violence as an abstract political doctrine. But membership in such an organization (whatever the knowledge and intent of the member) cannot create a clear and present danger and is protected by the First Amendment and due process.

2. The insufficiency of the evidence.

Had the court below properly construed the statute, a judgment of acquittal would have been required by its own decisions in *United States v. Silverman*, 248 F. 2d 271 and *United States v. Jackson*, 257 F. 2d 830, as well as by *Yates, supra*. Proof of the character of the advocacy of the Communist Party was substantially the same in all four cases, resting as it did on the same books and on the testimony of the same witness, Lautner. And the evidence as to the industrial concentration policy of the Party and its "underground" activities, on which the court below heavily relied, was rejected as proof of action-inciting advocacy in *Silverman*, *Jackson* and *Yates*.

Furthermore, as is apparent from the summary of the evidence in the opinion below (App. A, *infra*, pp. 17-19) there was no showing that petitioner had ever personally incited others to violent overthrow. The facts that he was an officer of the Party, was active in its affairs and had predicted the eventual overthrow of capitalism in this country are wholly insufficient to establish guilty knowledge. *Nowak v. United States, supra*, at 666-68.

3. The erroneous admission of evidence.

Lautner's testimony concerning the teaching and advocacy of the Communist Party covered a span of twenty years. All of it related to incidents prior to 1950, outside of the period of the statute of limitations. Many of the incidents he recounted occurred prior to January, 1946, the beginning of the indictment period, and others ante-dated enactment of the Smith Act in 1940. Furthermore, with the few exceptions noted above, petitioner was not present at any of the conversations, classes, conventions and meetings which Lautner described, nor were they connected with petitioner in any other way.

Much of this testimony was highly prejudicial. To cite but two examples, Lautner was permitted to testify that he attended a Party school in 1930 where he was taught that a peaceful transition to socialism was impossible in this country (R. 51-53), and that he was present at a meeting in 1934 where instructions were given to infiltrate the National Guard (R. 27). Furthermore, inflammatory passages were read to the jury from books and articles which Lautner said he had used in Party classes although there was no evidence that petitioner had ever seen, much less read them (see e. g., R. 54, 92-93). Finally, Lautner was permitted to state his opinion that the ultimate aim of the Communist Party is violent overthrow (R. 383-85).

All of this evidence was admitted on the theory that the prosecution was entitled to prove the nature of the Party's advocacy by facts outside of petitioner's knowledge. But the central issue in the case was whether, to the knowledge of petitioner, the Party advocated proscribed doctrine. Statements and opinions of third parties which were never communicated to petitioner are wholly irrelevant to that issue. Moreover, they are incompetent as hearsay. Finally, insofar at least as this evidence ante-dated the Smith Act, it should have been excluded for remoteness. *Wolf v. United States*, 259 F. 388; *Haywood v. United States*, 268 F. 795; *Langer v. United States*, 76

F. 2d 817; *Kammann v. United States*, 239 F. 192. Cf. *United States v. Dennis*, 183 F. 2d 201, to the contrary.

The evidentiary questions presented here, like the similar questions presented in *Scales*, merit review by this Court.

4. Section 4(f) of the Internal Security Act as a bar to prosecution of the offense charged.

Section 4(f) of the Internal Security Act (50 U. S. C. 783(f)) provides that neither membership nor officership in a Communist organization "shall constitute per se a violation of subsection (a) or subsection (c) of this section or of any other criminal statute" (emphasis supplied). The court below held that this section does not bar prosecution of a Communist Party member under the membership clause of the Smith Act because membership, when accompanied by guilty knowledge and intent, is something more than "membership per se" for which immunity is given.

This restrictive construction of section 4(f) makes the reference to "any other criminal statute" meaningless. For the only other criminal statute which might have been applicable to members of the Communist Party by virtue of their membership was the membership clause of the Smith Act. And that statute makes guilty knowledge an element of the offense. Hence, Congress must have intended membership "per se" to embrace membership with guilty knowledge, but to exclude membership which is accompanied by some other *overt act*. The legislative history confirms this reading of 4(f) and demonstrates that Congress intended it to bar the prosecution of Communists under the membership clause. See Sen. Rep. No. 2369, Part 2, 81st Cong., 2d Sess., pp. 12-13; 96 C. R. 14479, 15198, 13739, 13761.

In its grant of certiorari in *Scales*, *supra*, the Court agreed to review the question here presented. Similar action should therefore be taken in the present case.

5. The constitutionality of the membership clause on its face and as applied.

Unlike the advocacy and organizing provisions of the Smith Act, the membership clause does not punish an individual for his own advocacy or activity but for the advocacy of others in the group of which he is a member. It is not advocacy but association which the clause makes criminal. The crime involves no overt act beyond that of becoming and remaining a member of the group. As written, the membership clause authorizes the conviction of an accused notwithstanding that his membership is for an innocent purpose and is wholly inactive.

A statute creating a crime of this character is plainly incompatible with the First Amendment and due process. Indeed, the government has conceded as much and urges only that the courts rewrite the statute by including criminal intent and what it calls "the activity factor" as additional elements of the offense.⁶ Moreover, as we have seen, the construction of the statute below adds a further element of unconstitutionality by authorizing a conviction for knowing membership in an organization which merely advocates *belief* in violent overthrow and not *action* to bring it about.

The Court has undertaken to review the constitutionality of the membership clause in *Scales*. The same action should follow here.

⁶ Intent to bring about violent overthrow is charged in the indictment. The addition of "the activity factor" was proposed in the Solicitor General's Supplemental Memorandum on Reargument in *Scales* and *Lightfoot*, *supra*, October Term, 1957. This factor was not charged in the indictment or covered by the trial court's instructions.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

JOHN J. ABT,
320 Broadway,
New York 7, N. Y.,
Attorney for Petitioner.

APPENDIX A**Opinion Below**

Before:

HINCKS and WATERMAN, *Circuit Judges*,
and RYAN, *District Judge*.

Appeal from a judgment of conviction rendered in the United States District Court for the Western District of New York after a trial with a jury before Judge Burke.
Affirmed.

CHARLES J. McDONOUGH, Buffalo, New York,
Attorney for appellant.

JOHN O. HENDERSON, United States Attorney for the Western District of New York, Buffalo, N. Y. (Lawrence P. McGauley, John C. Keeney, and John J. Keating, Attorneys Department of Justice, on the brief), *for appellee.*

RYAN, *District Judge*:

This is an appeal from a judgment of conviction and sentence for violation of the membership provision of the Smith Act, 18 U. S. C. § 2385.* The indictment charged:

* The statute provides:

"Whoever organizes or helps or attempts to organize any society, group or assembly of persons who teach, advocate or encourage the overthrow of any such government by force and violence; or becomes or is a member of, or affiliates with any such society, group or assembly of persons, knowing the purpose thereof—Shall be fined not more than \$10,000 or imprisoned not more than ten years, or both * * *"

1. That from January 1946 up to November 1954 (the date of the filing of the indictment), the Communist Party has at all times been a group of persons who teach and advocate the forcible overthrow of the Government of the United States as speedily as circumstances would permit;

2. That continuously from January 1946, the defendant has been a member of the Communist Party well knowing that it was a group that taught and advocated the forcible overthrow of the Government as speedily as circumstances would permit, and that defendant intended to bring about such overthrow by force and violence as speedily as circumstances would permit.

The appeal raises questions as to the sufficiency of the evidence, the constitutionality of the statute and the validity of the indictment in view of Section 4(f) of the Internal Security Act 1950, 50 U. S. C. § 783(f). This case is one of first impression in this Circuit, although the Fourth and Seventh Circuits have upheld convictions under the membership clause. *Scales v. United States*, 227 F. 2d 581 (4th Cir., 1956) and #7637, October 6, 1958, certiorari granted December 18, 1958; *United States v. Lightfoot*, 228 F. 2d 861 (7th Circuit, 1956).*

The evidence presented must be viewed in the light of the trial court's charge to determine the questions raised as to sufficiency and constitutionality. The charge required the jury to make an affirmative finding on four elements before it could convict:

1. The Communist Party is a group which teaches and advocates the overthrow of the United States Government by force and violence as speedily as circumstances will permit;

* Both these cases were reversed by the Supreme Court (355 U. S. 1 and 2) on the authority of *Jencks v. United States*, 353 U. S. 657, following which *Scales* was retried in February 1958 and the conviction again affirmed. Defendant here concedes that there is no *Jencks* question in this case.

2. The defendant was a member of the Communist Party of the United States;

3. While a member defendant had knowledge that the Party taught the forcible overthrow of the Government as soon as circumstances would permit;

4. Defendant individually intended to bring about the overthrow and destruction of the Government by force and violence as soon as circumstances would permit.

In addition, the jury was required to find that these four elements co-existed at some time between September 1, 1951 and November 8, 1954 the period covered by the Statute of Limitations (18 U. S. C. § 3282 as amended September 1, 1954). If the evidence was sufficient to justify the jury's findings on the four elements this will dispose of appellant's challenge to the evidence. We hold that the jury's verdict was supported by the proof on trial.

The nature of the Communist Party as a group which teaches and advocates the overthrow of the Government by force and violence as speedily as circumstances would permit was abundantly established much in the pattern we reviewed and affirmed in *United States v. Dennis*, 183 F. 2d 201, aff'd. 341 U. S. 494 (1951), and *United States v. Flynn*, 216 F. 2d 354. Thus, the systematic teaching in Party schools of the principles of Marxism-Leninism together with the so-called Communist "classics" were set forth for the jury. As to the "classics" appellant concedes in his brief that they "all predicted and advocated the eventual overthrow of capitalism by the revolution of the proletariat, to be accomplished by force and violence if necessary." The witness Lautner brought these teachings to the Party schools over a period of many years. That the Party equated the principles of Marxism-Leninism with force and violence was attested to further by its condemnation at the National Convention in 1945 of the "peaceful co-existence" policy of the American Communist Party under the leadership of Browder, described by the Party as a "rejection of the Marxian concept of the revolutionary

initiative of the working class ' and the reconstitution of the Party and reeducation of its members along lines of Marxist orthodoxy. It would serve no useful purpose for us here to review in detail the many documents, books and periodicals before the jury which established and justified a finding that the aims and avowed purposes of the Party was one of dedication to the revolutionary Marxist-Leninist line.

In addition, there was proof of the Party's plan of industrial concentration by which the Party's activities were concentrated in basic industries and the largest plants, and key national figures shifted into the leadership of these concentration districts and areas, thereby attempting to give the Party the power to paralyze the nation's industrial capacity, in furtherance of its ultimate aim. Then, too, there was proof that in 1948 the overt call to forcible overthrow espoused at the Convention was changed because of the Smith Act prosecution of its top leaders, and that consultations were had with European Communist leaders and preparations made based on international experience to take the hard core members of the Party underground, and place them in trade unions and mass organizations. This move was designed to enable the Party—which in time of prosecution suffered a 90% reduction in membership—to function as an organized group under any and all conditions through absolutely loyal members unconditionally dedicated to and particularly suited to carrying out the Party's objectives. There was evidence that as late as Labor Day in 1951, within the indictment period, the defendant as one of those members stated that he was waiting for instructions from his superiors as to what he should do if apprehended, that he might find it necessary to flee the country and that he was willing to endure any hardship and even lay down his life if necessary in order that the work of the Party might continue. When defendant disappeared into the employ of one of the basic industries, in disguise and under a false name, it was reasonable for

the jury to infer that his move had been dictated by his superiors in the interests of the Party.

The sum of these activities when viewed against the background of the systematic teaching of Marxism-Leninism, the program adopted in 1945, the rigidity of purpose of the Party and the tenacity of the hard core members despite prosecution, and the absence of any evidence of accomplishment or abandonment of their purpose was sufficient basis to support an inference that the character of the Party as a group dedicated to the violent overthrow of the Government, established in prior years, continued unaltered through the statutory period. *United States v. Schneiderman*, 106 F. Supp. 892, 899; 2 Wigmore on Evidence § 437, 3rd ed. 1940.*

There is no dispute in this case as to the second element; this is conceded in appellant's brief: "there was no question about Noto's membership in the Communist Party." He was a paid employee and organizer. His income tax return for the year 1951 showed him to be employed as a sub-district organizer and the Party's withholding tax return for the third quarter ending September 31, 1951 and dated October 18, 1951, signed by the defendant as Chairman of the Party showed him to be a paid employee.

The third element, defendant's knowledge of the Party's illegal teaching and advocacy, and the fourth element his intent were also amply supported by proof which justified the jury's finding. Defendant states in his brief, "the Government proved that the defendant was extremely active in the affairs of the Party in Buffalo and Western New York." He was a well indoctrinated member having been taught in Party schools the Marxist-Leninist principles by

* When the existence of an object, condition, quality or tendency at a given time is in issue, the prior existence of it is in human experience some indication of its probable persistence or continuance at a later period. The degree of probability of this continuance depends on the chances of intervening circumstances having occurred to bring the existence to an end.

use of the Communist "classics." These, as we mentioned above, were the same source materials to which we adverted in the *Dennis* case as proving the prosecution's contention of force and violence "quite independently of the testimony of its witnesses. * * * " 183 F. 2d at 206.

Defendant had occupied positions of importance in the Party; he had been the Greater Buffalo region organizer in 1947, the sub-district organizer of Western New York in 1947-48; Chairman of the Erie County Communist Party and District Chairman of the Party Upstate District. He lectured in these capacities at various meetings on the classical aims and objectives of the Party and apparently considered himself sufficiently well versed in the Party's objectives to predict the time when capitalism would be destroyed and the Government overthrown. In the Fall of 1951 when he was endeavoring to induce Regan, a fellow member, to become active in the Party, he stated that he would stand behind the actions of a particular leader (Ellis) as one who represented Communist Party Policy; that he was familiar enough with the Party's tactics to anticipate that he might be directed to submit to arrest, be bailed out and then jump his bail. In October, 1951 he picked up copies of the *Daily Worker* at Regan's house; on September 15 or 17th he collected money toward furnishing bail to arrested leaders. Defendant actively participated in the industrial concentration program pointing out the steel industry in his area as the prime Party target. Considering the ultimate Marxist-Leninist goal, concentration on the industry which is probably the most important to the Country's economy suggests the attempt to gain for the Party the ability to sabotage and paralyze the entire nation—a coup vital to the Party's objective to attack when the time was ripe. He assisted the concentration program of getting undercover Communists into key shops and departments within the automobile industry. The jury could well have concluded from these activities that defendant was intent upon the ultimate Marxist-Leninist purpose of forceful overthrow by aiding in the

proximate task of industrial concentration. *Silverman v. United States*, 248 F. 2d 671, 685-6 (2nd Cir.).

But it was in the area of the Party's underground apparatus that defendant was particularly active. The witness Lautner was charged by the Party with activating the underground. In this capacity he met with the defendant as one of the three top Party men in the Buffalo area. Defendant was placed in charge of the underground work in all New York State north of Poughkeepsie. Defendant participated in obtaining and secreting machines for printing Party material. He instructed Party subordinates to meet secretly with other Party officials under assumed names. He was awaiting instructions from his superiors and expressed a willingness to follow instructions to leave the Country and even "lay down his life," if necessary, thus emphasizing the unswerving loyalty and devotion exacted of those which made up the elite 10% segment of the underground. Thereafter, he disguised his appearance by growing a mustache and cutting his hair short in order to conceal his identity. He also located homes in which to hide Party members and Party equipment and collected funds to help them. He further cloaked his identity by going to work from 1953 to 1954 in a plant in Newark, N. J. under an alias with a false Social Security number.

While it is true that, apart from the specific instances mentioned, most of the direct evidence of defendant's activities related to a period prior to September, 1951, it provided adequate basis for inferring that his knowledge, intent and responsibility to the Party in carrying out its purposes continued through the following years, since "the running of the statute of limitations cannot empty a man's mind of knowledge of this sort." *Scales v. United States*, 227 F. 2d 581, 591; *United States v. Mesarosh*, 223 F. 2d 449; *United States v. Schneiderman*, 106 F. Supp. 892.

We conclude that the Government proved by sufficient evidence that the defendant was an active member in an organization teaching and advocating the violent overthrow

of the Government well knowing the aim and purpose of the Party and with intent to achieve its illegal purpose.

We turn now to consider the defendant's argument against the constitutionality of the membership clause of the Smith Act. Two arguments are raised: (1) the statute fails to include intent as an element of the offense and (2) it imputes guilt solely by association. Under the first, defendant urges that the prosecution fell into error by "gratuitously adding to the charge" the further charge "and said defendant intending to bring about such overthrow by force and violence as speedily as circumstances would permit." His argument goes on to assert that the membership clause of the statute "does not require proof of advocacy, teaching or organization by the defendant, or proof of any overt act by the defendant." Since no intent is implicit in membership, defendant says, the statute penalizes membership without proof of personal intent to overthrow the Government by violence, thereby violating the rights of free speech and assembly in the First Amendment as well as due process guaranteed by the Fifth Amendment.

There is no doubt that the membership as well as the advocacy clause limits rights of free speech and assembly guaranteed by the First Amendment. These rights however are not absolute and "were not intended to give immunity for every possible use of language." *Dennis v. United States*, 341 U. S. 494, at 534, quoting *Frohwerk v. United States*, 249 U. S. 204, 206 (concurring opinion of Mr. Justice Frankfurter). The constitutionality of the infringement must be determined by weighing against it the need for protection to our form of government. In other words, the infringement must be justified by the necessity of this type of protection to the government and this in turn must be decided by the particular activity sought to be punished or forbidden. Does the activity proscribed present an effective means of bringing about or does it create a clear and present danger that the undesirable result—the violent overthrow of the Government—will be brought about?

While we agree that the membership clause does not require proof of advocacy, we do not agree that it does not require proof of intent on the part of the member to bring about the violent overthrow and that it penalizes membership *per se*. Although the statute does not spell out the element of intent, the knowledge of purpose which it does literally require before a conviction may be had is that kind of knowledge from which, if established, it may or must be said that intent inescapably follows. In *Dennis, supra*, the Supreme Court imputed into the Smith Act "as an essential element of the crime proof of intent of those who are charged with its violation to overthrow the Government," and while the charge before it was on the advocacy clause the Court did not limit its examination of the Act and conclusion as to its validity, to that clause but held that:

"The structure and purpose of the statute demand the inclusion of intent as an element of the crime. Congress was concerned with those who advocate and organize for the overthrow of the Government. Certainly, those who recruit and combine for the purpose of advocating overthrow intend to bring about overthrow" (p. 499).

That knowing membership in the Communist Party warrants inferences of personal intent and guilt was frankly recognized in Mr. Justice Jackson, in *American Communications Association v. Douds*, 339 U. S. 382, 432, when he wrote (concurring and dissenting opinion):

"Membership in the Communist Party is totally different [from membership in lawful political parties]. The Party is a secret conclave. Members are admitted only upon acceptance as reliable and after indoctrination in its policies, to which the member is fully committed. They are provided with cards or credentials, usually issued under false names so that the identification can only be made by officers of the

Party who hold the code. Moreover, each pledges unconditional obedience to party authority. Adherents are known by secret or code names. They constitute 'cells' in the factory, the office, the political society, or the labor union. For any deviation from the party line they are purged and excluded.

"Inferences from membership in such an organization are justifiably different from those to be drawn from membership in the usual type of political party. Individuals who assume such obligations are chargeable, on ordinary conspiracy principles, with responsibility for and participation in all that makes up the Party's program."

An argument similar to that here raised was rejected both by the Fourth and Seventh Circuits in the *Scales* and *Lightfoot* cases, *supra*. The Fourth Circuit equated the act of knowing membership for the purposes of imputing intent with an act of knowingly joining a conspiracy to overthrow the Government and held in the second opinion that on the issue of constitutionality the distinction was without significance:

"It is too clear for argument that membership in an organization with knowledge of its purposes and intent to make them effective is a joint rather than an individual undertaking which gathers its strength from an association or group of individuals inspired by a common purpose." (No. 7637, slip opinion October 6, 1958, p. 7.)

The indictment charged and the jury was required to find intent, as all "membership" cases have so far; this was not under our interpretation of the statute a capricious addition to the charge for requiring criminal intent is the normal course rather than the exception in our jurisprudence. As *Dennis* establishes, Congress could constitutionally make criminal the teaching and advocacy of the violent overthrow of the Government. We think it follows that it could also proscribe high level, active membership unre-

mittingly devoted and pledged to the accomplishment of that end.

The second constitutional argument raised by defendant is that the membership clause imputed guilt solely by association. This argument is a corollary of defendant's further contention that prosecution under the membership clause was barred by Section 4(f) of the Internal Security Act of 1950.* The identical argument was raised and disposed of in *Scales* and *Lightfoot, supra*, and we agree with its disposition.

The answer to defendant's contention is, as we have just discussed, that the membership clause does not punish membership *per se*; the additional requirements of knowledge of the criminal purpose of the group and intent to carry out that purpose take this prosecution out of the infirmities which defendant fears. Under this clause of the Act it is not association with tolerance of the activities and aims of the other members which is forbidden, even if it be true that the mere fact of membership gives aid and encouragement to the group, but personal desire and dedication, with full knowledge and awareness, to bring the end to fruition. The guilt must be personal and independent; it may not be vicariously imputed in order to convict under the clause. Moreover, the legislative history of the Internal Security Act shows no evidence that Congress envisioned much less intended a bar to membership prosecutions under the Smith Act. 96 Cong. Rec. 15198, 14190. Indeed Section 4(f) was enacted by Congress to preserve the constitutionality of the registration provisions in the Internal Security Act and Congress expressly stated in Section 17 (50 U. S. C. 796):

"The foregoing provisions of this title shall be construed as being in addition to and not in modification of existing criminal statutes."

* That statute provides: "Neither the holding of office nor membership in any Communist organization by any person shall constitute *per se* a violation of subsections (a) or (c) of this section or of any other criminal statute."

As we have said we need not here speculate and attempt to resolve subtle distinctions in the case of one who may innocently have joined the Party for some Utopian idea because this defendant was shown to be a leader steeped in Party discipline and dedicated to its objectives. Clearly this is not a prosecution of membership *per se* but of membership with knowledge and criminal intent.

Defendant complains that the trial court failed to make a finding that a clear and present danger existed of violent overthrow of the Government. This element, as the Supreme Court ruled in *Dennis* is a question for the trial court to determine for itself. 341 U. S. 410. What we said in *United States v. Flynn, supra*, disposes of this issue. The factors considered by the trial court and affirmed by us in the latter case were applicable to this case. Indeed, the indictment periods in this case and in *Flynn* were overlapping. During much of the period from September 1951 to November 1954, "The Korean conflict was raging and our relations with the Communist world had moved from cold to hot war . . ." (216 F. 2d 367).

The trial court properly declined defendant's requested charges (1) that the Government failed to prove a clear and present danger of forcible overthrow of the Government and (2) that the jury must find a clear and present danger before it could convict. As both *Dennis* and *Flynn* make explicitly clear this is a question for the court and not the jury. By declining the requested charges and submitting the case to the jury on the four elements we have discussed the trial judge implicitly found the existence of a clear and present danger. We agree that it did exist.

This case does not confront the Court with the prosecution of a leader, organizer or teacher of the Communist Party charged during the indictment period with advocating and teaching the duty and necessity of overthrowing the Government by force and violence or of organizing a society to so advocate. Consequently the incitement to action test enunciated in *Yates v. United States*, 354 U. S. 298 and applied by us in *Silverman, supra* and *United States v.*

Jackson, 257 F. 2d 830 is inapplicable. The crime for which appellant was indicted, brought to trial and convicted is what determines the sufficiency of the evidence and not another similar, even related, crime. The clauses of the Act are disjunctive and quite separable, and as appellant concedes or maintains there is no requirement that a member or affiliate be shown to have been advocate, teacher or organizer. True it is that this defendant was very likely all three, prior to his going underground, but he was not indicted for pre-underground activities or for teaching and advocating. Proof of these activities was offered and very properly considered by the jury as evidence bearing on his knowledge and intent during the statutory years when he was charged with being a member.

That the words of the statute defining the particular activity proscribed are to be carefully considered and their meaning strictly adhered to was made clear in *Yates*. There the Court went into a careful analysis of the exact meaning of the word "organize" and reversed that part of the indictment which so charged concluding that the activities of the defendant during the statutory period although termed "organizational" corresponded more to the carrying on of an existing body than to the literal meaning of the word—the creating of such body.

" * * * we find nothing which suggests that the 'organizing' provision was intended to reach beyond this, that is, to embrace the activities of those concerned with carrying on the affairs of an already existing organization. Such activities were already amply covered by other provisions of the Act, such as the 'membership' clause, and the basic prohibition of 'advocacy' in conjunction with the conspiracy provision, and there is thus no need to stretch the 'organizing' provision to fill any gaps in the statute" (308).

Similarly with respect to the words "teach" and "advocate" it found a consciousness on the part of Congress, in

enacting the statute, that these words had been in the past construed as terms of art carrying a special and limited connotation. As defendant points out Congress should not be deemed to have used language which was redundant or mere surplusage and the terms "conspiracy, organization, advocacy, teaching and knowing membership were all specifically, separately and disjunctively enumerated as violations of the Act" (appellant's brief).

The distinction lies in the fact that in the "advocacy" clause it is the act of producing a state of mind in another which is forbidden, i.e. a "stirring of people to action" a "call to action" as distinguished from mere "teaching with evil intent." *Yates, supra.* Under the "membership" clause it is the person's own intent to overthrow the Government coupled with activity on his part to achieve the end which is aimed at. Since defendant was not indicted for activities the end result of which were to culminate in action on the part of others, it was not necessary that the evidence of his activities meet the *Yates* test. Upon sufficient proof all four elements of the crime charged in the indictment were submitted under a proper charge to the jury which found the defendant guilty.

The conviction is affirmed.

APPENDIX B

Statutes Involved

1. The Smith Act, 18 U. S. C. 2385:

Whoever knowingly or willfully advocates, abets, advises, or teaches the duty, necessity, desirability, or propriety of overthrowing or destroying the government of the United States or the government of any State, Territory, District or Possession thereof, or the government of any political subdivision therein, by force or violence, or by the assassination of any officer of any such government; or

Whoever, with intent to cause the overthrow or destruction of any such government, prints, publishes, edits, issues, circulates, sells, distributes, or publicly displays any written or printed matter advocating, advising, or teaching the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United States by force or violence, or attempts to do so; or

Whoever organizes or helps or attempts to organize any society, group, or assembly of persons who teach, advocate, or encourage the overthrow or destruction of any such government by force or violence; or becomes or is a member of, or affiliates with, any such society, group, or assembly of persons, knowing the purposes thereof—

Shall be fined not more than \$10,000 or imprisoned not more than ten years, or both, and shall be ineligible for employment by the United States or any department or agency thereof, for the five years next following his conviction.

2. Section 4(f) of the Internal Security Act, 50 U. S. C. 783(f):

(f) Neither the holding of office nor membership in any Communist organization by any person shall constitute per se a violation of subsection (a) or subsection (c) of this section or of any other criminal statute. The fact of the

registration of any person under section 787 or section 788 of this title as an officer or member of any Communist organization shall not be received in evidence against such person in any prosecution for any alleged violation of subsection (a) or subsection (c) of this section or for any alleged violation of any other criminal statute.

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FILED

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JAMES R. BROWNING, Clerk

In the Supreme Court of the United States

OCTOBER TERM, 1958-1959

JOHN FRANCIS NOTO, *Petitioner*

v.

UNITED STATES OF AMERICA

On Motion for Leave to Proceed in Forma Pauperis and on
Petition for a Writ of Certiorari to the United States
Court of Appeals for the Second Circuit

MEMORANDUM FOR THE UNITED STATES

J. LEE RANKIN,
Solicitor General,
Department of Justice,
Washington 25, D. C.

In the Supreme Court of the United States

OCTOBER TERM, 1958

No. 564 Misc.

JOHN FRANCIS NOTO, *Petitioner*

v.

UNITED STATES OF AMERICA

On Motion for Leave to Proceed in Forma Pauperis and on
Petition for a Writ of Certiorari to the United States
Court of Appeals for the Second Circuit

MEMORANDUM FOR THE UNITED STATES

This is the second conviction under the so-called "membership" clause of the Smith Act (18 U.S.C. 2385) to reach this Court since its decision in *Yates v. United States*, 354 U.S. 298, construing and interpreting the "organizing" and "teaching and advocating" clauses of the same Act. On December 15, 1958, the Court granted certiorari in *Scales v. United States* (358 U.S. 917), No. 488, this Term, to review a decision

of the Fourth Circuit Court of Appeals affirming a conviction under an indictment similar to that in this case. *Scales* is presently pending before the Court and for the reasons set forth below we respectfully suggest that disposition of this petition be held in abeyance pending a determination in that case.

Petitioner was convicted following a trial by jury in the United States District Court for the Western District of New York and sentenced to five years' imprisonment under an indictment, returned on November 8, 1954. The indictment charged that continuously, since January, 1946, up to the date of its filing, the Communist Party of the United States was a society, group and assembly of persons who taught and advocated the overthrow and destruction of the Government of the United States by force and violence as speedily as circumstances would permit and that continuously, during this entire period, petitioner was a member of the Communist Party of the United States with knowledge that it did so teach and advocate and with the intent to bring about such overthrow and destruction of the Government of the United States by force and violence as speedily as circumstances would permit.

On appeal to the Court of Appeals for the Second Circuit, the judgment of conviction was affirmed on December 31, 1958. In its opinion (Pet. App. A 13-26) the Court of Appeals reviewed the evidence introduced at the trial both with respect to the nature of the Communist Party and with respect to petitioner's personal knowledge of the Party's character (his membership in the Party being conceded) and his intent to bring about its aims and purposes as

speedily as circumstances would permit. The court concluded (*id.* at 19-20) that:

* * * the Government proved by sufficient evidence that the defendant was an active member in an organization teaching and advocating the violent overthrow of the Government well knowing the aim and purpose of the Party and with intent to achieve its illegal purpose.

It further held that Congress could constitutionally, through enactment of the membership clause of the Smith Act, "proscribe high level, active membership unremittingly devoted and pledged to the accomplishment of" the forcible and violent overthrow of the Government and that the Act had validly been applied to petitioner's membership and activities in the Party (*id.* at 22-23).

In addition, the court below pointed out that the offense of which petitioner was convicted—membership in the Communist Party with knowledge of its illegal aims and purposes and intent to achieve them—is distinct under the Act from the offense of advocating and teaching the duty and necessity of overthrowing the Government by force and violence or of organizing a society or group of persons who so advocate. It accordingly held that the incitement-to-action test laid down by this Court in *Yates v. United States*, 354 U.S. 298, for determining whether speech, oral or written, is of the type proscribed by Congress in the Act's "teaching and advocacy" clause, was not required to be applied to the evidence of petitioner's activities which was received at the trial to prove his guilt under the membership clause (*id.* at 24-26).

Petitioner raises five questions in his petition (Pet. 2):

1. Whether the court below erred in holding that the incitement-to-action test of advocacy enunciated in *Yates v. United States*, 354 U.S. 298, is inapplicable to a prosecution under the membership clause of the Smith Act.

2. Whether the evidence was sufficient to sustain the conviction.

3. Whether the conviction was based on evidence which should have been excluded as incompetent, irrelevant, remote and prejudicial.

4. Whether the immunity conferred by section 4(f) of the Internal Security Act (50 U.S.C. 783 (f)) bars prosecution of the offense charged in the indictment.

5. Whether the membership clause of the Smith Act is unconstitutional on its face or as applied in this case.

Questions 4 and 5, *supra*, are substantially identical with questions 2 and 1, respectively, in the *Scales* case, *supra* (see *Scales* Petition, p. 2).

Question 2, *supra*, involving the sufficiency of the evidence to sustain the conviction in this case, is closely analogous to question 3 in the *Scales* case (*Scales* Petition, p. 2), involving the sufficiency of the evidence to sustain the conviction in that case. While the evidence is of course not the same in the two cases, the records are closely comparable in this respect.

Question 3, *supra*, involving the admissibility of allegedly "incompetent, irrelevant, remote and prejudicial" evidence, was not urged in the Court of Ap-

peals.¹ If, notwithstanding this fact, this Court should choose to consider this question, we note that it is very similar to question 4, part (A), in the *Scales* case (*Scales* Petition, pp. 2, 24-27), involving the admissibility of allegedly "incompetent, irrelevant, remote and inflammatory" evidence (*id.*, p. 24).

Question 1, *supra*—" [w]hether the court below erred in holding that the incitement-to-action test of advocacy enunciated in *Yates v. United States*, 354 U.S. 298, is inapplicable to a prosecution under the membership clause of the Smith Act"—is based, we think, upon a misreading of the opinion below. The Court of Appeals pointed out, correctly, that "[s]ince defendant was not indicted for *activities* the end result of which were to culminate in action on the part of others, it was not necessary that the evidence of *his activities* meet the *Yates* test" (Pet. App. A 26; emphasis added). But this is not to say that the *Yates* test of advocacy is "wholly inapplicable" to a prosecution under the membership clause—as petitioner reads the opinion to hold (Pet. 6). It is concededly neces-

¹ "Only in exceptional cases will this Court review a question not raised in the court below." *Lawn v. United States*, 355 U.S. 339, 362-363, n. 16, and cases cited. As in *Lawn*, "[t]here are no exceptional circumstances here" (*ibid.*). Not only was the admission of the evidence now complained of not "plain error"—the usual standard whereby error, not duly presented, will be noticed (cf. Rule 52(b), F.R. Crim. P.; Rule 40(1)(d)(2) of the Rules of this Court)—there was no error at all, i.e., the receipt of the evidence in question was correct. Cf. *Scales v. United States*, 260 F. 2d 21, 38-39 (C.A. 4), pending on writ of certiorari, No. 488, this Term; *Scales v. United States*, 227 F. 2d 581, 589-592 (C.A. 4), reversed on other grounds, 355 U.S. 1; *United States v. Lightfoot*, 228 F. 2d 861, 867 (C.A. 7), reversed on other grounds, 355 U.S. 2; *United States v. Dennis*, 183 F. 2d 201, 231-232 (C.A. 2), affirmed on other issues, 341 U.S. 494.

sary that the *organization*—knowing membership in which is charged—be one whose advocacy of violent overthrow meets the *Yates* test² and we do not read the opinion below as questioning this proposition.

Since it is likely that the Court's decision in the *Scales* case will illuminate or be dispositive of most if not all of the questions involved in the present petition (including question 1),³ it is respectfully suggested that disposition of this petition be held in abeyance pending the Court's determination of *Scales*.

Respectfully submitted,

J. LEE RANKIN,
Solicitor General.

FEBRUARY 1959.

² It is to be noted that the trial judge charged the jurors that the very first factual finding which they were required to make in order to convict was that the Communist Party of the United States was during the pertinent period a group or society which taught and advocated the forcible overthrow of the Government of the United States in the sense of an urging "to action", by means of "language reasonably calculated to incite persons . . . to use force and violence to overthrow or destroy the United States Government" (Tr. 1252, 1257-1258). The trial judge thus clearly, in substance, directed the jury to apply the *Yates* test to the organization's advocacy.

³ *Scales* involves, in addition, questions not presented here.

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JAMES R. BROWNING, Clerk

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1959

No. ~~464~~ 9

JOHN FRANCIS NOTO,

Petitioner,

vs.

UNITED STATES OF AMERICA.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR PETITIONER

JOHN J. ABT,

320 Broadway,

New York 7, N. Y.,

Attorney for Petitioner.

INDEX

	Page
BRIEF FOR PETITIONER:	
Opinion Below	1
Jurisdiction	1
Statutes Involved	2
Questions Presented	2
Statement of the Case	2
The indictment	3
The motion to dismiss the indictment	4
The evidence	4
The instructions	8
The sentence	9
The opinion below	9
Summary of the Argument	10
Argument	25
I. The Ruling Below That the Evidence Was Sufficient to Support the Conviction Is Contrary to <i>Yates v. United States</i> and Other Applicable Decisions of This Court	25
A. The advocacy of the Communist Party	25
B. The knowledge and intent of the petitioner	31
1. Knowledge	31
2. Intent	33
II. The Admission of Prejudicial Evidence That Was Incompetent, Irrelevant and Remote Requires a Reversal	35
A. Lautner's opinion testimony	35
B. Third party declarations	37

	Page
III. Prosecution of the Offense Charged in the Indictment Is Barred by Section 4(f) of the Internal Security Act	42
IV. The Membership Clause of the Smith Act Is Unconstitutional on Its Face and as Applied	52
A. The statute as interpreted by the Government contravenes the clear and present danger doctrine	54
1. The applicability of the doctrine	54
2. The statute on its face	64
3. The statute as applied	65
B. The statute as interpreted by the Government imputes guilt solely from association	69
C. The statute, as written, is unconstitutional for additional reasons	75
1. The lack of intent	75
2. The lack of an "activity" factor	77
D. The interpretations of the statute proposed by the Government are impermissible	78
1. Specific intent	78
2. "Activity"	81
Conclusion	84
APPENDIX A: Statutes Involved	85
APPENDIX B: Excerpts From the Congressional Debate on the Communist Control Act	91
APPENDIX C: Order of the Court Setting <i>Scales v. United States</i> for Reargument	94

CITATIONS

Page

CASES:

<i>Abrams v. United States</i> , 250 U.S. 616	17, 56
<i>Adler v. Board of Education</i> , 342 U.S. 485	71, 76
<i>American Communications Association v. Douds</i> , 339 U.S. 382	22, 23, 62, 74, 80
<i>Barrett v. United States</i> , 33 F. 2d 115	39
<i>Bary v. United States</i> (C.A. 10)	27
<i>Baumgartner v. United States</i> , 322 U.S. 665	33, 79
<i>Brandt v. United States</i> , 256 F. 2d 79	27
<i>Bridges v. California</i> , 314 U.S. 252	69
<i>Bridges v. Wixon</i> , 326 U.S. 135	73
<i>Bryant v. Zimmerman</i> , 278 U.S. 63	22, 63
<i>Chastleton Corp. v. Sinclair</i> , 264 U.S. 543	68
<i>Cole v. Arkansas</i> , 333 U.S. 196	74
<i>Communist Party v. Subversive Activities Con- trol Board</i> , 351 U.S. 115	45
<i>Communist Party v. Subversive Activities Con- trol Board</i> , No. 537, this Term	51
<i>Craig v. Harney</i> , 331 U.S. 367	57
<i>De Jonge v. Oregon</i> , 299 U.S. 353	18, 53, 60, 74, 77
<i>Dennis v. United States</i> , 341 U.S. 494	3, 4, 16, 30, 53, 57, 58, 64
<i>Fujimoto v. United States</i> , 251 F. 2d 342	26
<i>Gitlow v. New York</i> , 268 U.S. 652	62
<i>Ginsberg & Sons v. Popkin</i> , 285 U.S. 204	50
<i>Hartzell v. United States</i> , 322 U.S. 680	34
<i>Hellman v. United States</i> (C.A. 9)	3
<i>Herndon v. Lowry</i> , 301 U.S. 242	60, 64, 71, 74, 76
<i>Huff v. United States</i> , 251 F. 2d 342	26
<i>Ingram v. United States</i> , 360 U.S. 672	33
<i>Jencks v. United States</i> , 353 U.S. 657	3
<i>Knauer v. United States</i> , 328 U.S. 654	33, 79
<i>Kotteakos v. United States</i> , 328 U.S. 750	33, 69
<i>Krulewitch v. United States</i> , 336 U.S. 440	39, 40, 75
<i>Lightfoot v. United States</i> , 355 U.S. 2	3
<i>Lightfoot v. United States</i> , No. 4, Oct. Term, 1957	9
<i>Maisenberg v. United States</i> , 366 U.S. 670	12, 32

	Page
<i>McDonald v. Thompson</i> , 305 U.S. 263	43
<i>McWhorter v. United States</i> , 281 F. 119	39
<i>Mesarosh v. United States</i> , 352 U.S. 1	27
<i>Morissette v. United States</i> , 342 U.S. 246	77, 81
<i>N.A.A.C.P. v. Alabama</i> , 357 U.S. 449	53, 55, 69
<i>Nowak v. United States</i> , 356 U.S. 660	12, 30, 32, 41
<i>Osman v. Douds</i> , 339 U.S. 846	80
<i>Pennekamp v. Florida</i> , 328 U.S. 331	58
<i>Pettibone v. United States</i> , 148 U.S. 197	81
<i>Pierce v. United States</i> , 252 U.S. 239	56
<i>Scales v. United States</i> , 355 U.S. 1	3
<i>Scales v. United States</i> , No. 3, Oct. Term, 1957	9
<i>Scales v. United States</i> , No. 8, this Term	2, 52
<i>Scales v. United States</i> , No. 488, Oct. Term, 1958	52
<i>Scales v. United States</i> , 260 F. 2d 21	3
<i>Scales v. United States</i> , 227 F. 2d 581	50
<i>Schaefer v. United States</i> , 251 U.S. 466	72
<i>Schenck v. United States</i> , 249 U.S. 47	17, 56, 58
<i>Schneiderman v. United States</i> , 320 U.S. 118	12, 33, 34, 79
<i>Schware v. Board of Bar Examiners</i> , 353 U.S. 232	74
<i>Screws v. United States</i> , 325 U.S. 91	23, 80
<i>Sentner v. United States</i> , 253 F. 2d 310	27
<i>Sorenson v. United States</i> , 168 F. 785	39
<i>Stromberg v. California</i> , 283 U.S. 359	64, 71, 76
<i>Thomas v. Collins</i> , 323 U.S. 516	53, 55, 69
<i>Tot v. United States</i> , 319 U.S. 463	72
<i>United States v. Blumberg</i> (E.D. Pa.)	3
<i>United States v. Bryan</i> , 339 U.S. 323	51
<i>United States v. Carll</i> , 105 U.S. 611	81
<i>United States v. Carrion</i> (D. P.R.)	27
<i>United States v. Dennis</i> , 183 F. 2d 201	39, 66, 78
<i>United States v. Dennis</i> , 9 F.R.D. 367	53
<i>United States v. Foster</i> , 80 F. Supp. 479	3
<i>United States v. Jackson</i> , 257 F. 2d 830	9, 26, 30
<i>United States v. Kuzma</i> , 249 F. 2d 619	27
<i>United States v. Lightfoot</i> , 228 F. 2d 861	50
<i>United States v. Lightfoot</i> (N.D. Ill.)	3
<i>United States v. Russo</i> (D. Mass.)	3, 27

INDEX

v

Page

<i>United States v. Silverman</i> , 248 F. 2d 671	9, 26, 29-30, 33, 36, 71
<i>United States v. Weiss</i> (N.D. Ill.)	3
<i>United States v. White</i> , 322 U.S. 694	39
<i>United States v. Yuginovich</i> , 256 U.S. 450	51
<i>Wellman v. United States</i> , 253 F. 2d 601	27
<i>Whitney v. California</i> , 274 U.S. 357	17, 22, 55, 56, 57, 62, 76
<i>Winters v. New York</i> , 333 U.S. 507	64
<i>Yates v. United States</i> , 354 U.S. 298	2, 3, 4, 9, 10, 25, 32, 34, 35-36, 41, 53, 65, 71-72

STATUTES AND LEGISLATIVE MATERIALS:

8 U.S.C. 1481	9
18 U.S.C. 2384	58
18 U.S.C. 2385	2, 9, 74
18 U.S.C. 3282	8
28 U.S.C. 1254	1
42 U.S.C. 402	9
Communist Control Act of 1954	49
Internal Security Act of 1950	2
Congressional Record	46, 47, 48, 49
Sen. Rep. No. 1365, 81st Cong., 2d Sess.	45
Sen. Rep. No. 2369, 81st Cong., 2d Sess.	46

MISCELLANEOUS:

Acheson, <i>A Democrat Looks at His Party</i> (1955)	70
Biddle, <i>The Fear of Freedom</i> (1951)	70
Chaffee, <i>Free Speech in the United States</i> (1954)	70
Commager, <i>The Pragmatic Necessity of Freedom; in Civil Liberties Under Attack</i> (1951)	70
Eisenhower, <i>N.Y. Times</i> , Oct. 21, 1954	67
Eisenhower, <i>N.Y. Times</i> , Jan. 6, 1955	67
Herter, <i>N.Y. Times</i> , Nov. 17, 1959	68
<i>N.Y. World Telegram and Sun</i>	27
O'Brian, <i>New Encroachments on Freedom</i> , 66 Har. L. Rev. 1	70
Warren, <i>Address</i> , 40 A.B.A. Jour. 955	68

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1959

No. 464

JOHN FRANCIS NOTO,

Petitioner,

vs.

UNITED STATES OF AMERICA.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR PETITIONER

Opinion Below

The opinion of the Court of Appeals (R. 438)¹ is reported at 262 F. 2d 501.

Jurisdiction

The judgment of the court below (R. 451) was entered on December 31, 1958. The petition for certiorari was filed January 23, 1959 and was granted on October 12, 1959. The Court has jurisdiction under 28 U.S.C. 1254.

¹ "R" refers to the record as printed in this Court and "Tr." to the record from the court below.

Statutes Involved

The pertinent provisions of the Smith Act (18 U.S.C. 2385) and the Internal Security Act of 1950 (50 U.S.C. 781 ff.) are set forth in Appendix A, *infra*.

Questions Presented

1. Whether the evidence was sufficient to support the conviction.
2. Whether the court below erred in holding that the incitement-to-action test of advocacy enunciated in *Yates v. United States*, 354 U.S. 298 is inapplicable to a prosecution under the membership clause of the Smith Act.
3. Whether the conviction was based on incompetent, irrelevant, remote and prejudicial evidence.
4. Whether the immunity conferred by section 4(f) of the Internal Security Act of 1950 (50 U.S.C. 783(f)) bars prosecution of the offense charged.
5. Whether the membership clause of the Smith Act is unconstitutional on its face or as applied in this case.

Statement of the Case

The judgment below affirmed the conviction of petitioner, after a jury trial, on a one count indictment (R. 1) charging violation of the membership clause of the Smith Act. This case and *Scales v. United States*, No. 8, this Term, present identical questions as to the constitutionality of the membership clause on its face and the effect of section 4(f) of the Internal Security Act as a bar to

the prosecution of Communists under this provision of the Smith Act.

Petitioner was tried and convicted in 1956, a year after the first conviction in *Scales*² and a year before this Court's decision in *Yates v. United States*, 354 U. S. 298. His conviction was affirmed in 1958, shortly after the affirmance of *Scales*' second conviction. *Scales v. United States*, 260 F. 2d 21.³

The indictment

The indictment was returned November 8, 1954 (R. 1). It charged that continuously since January, 1946, the Communist Party of the United States was a society of persons who advocated the forcible overthrow of the Government of the United States as speedily as circumstances would permit, and that during the same period petitioner was a member of the Party knowing that it engaged in such advocacy "and said defendant intending to bring about such forcible overthrow as speedily as circumstances would permit."

² Reversed by this Court, together with another conviction for violation of the membership clause, pursuant to the Government's confession of error and on the authority of *Jencks v. United States*, 353 U.S. 657. *Scales v. United States*, 355 U.S. 1; *Lightfoot v. United States*, 355 U.S. 2.

³ Fifteen additional prosecutions under the membership clause are pending in the lower courts. *Hellman v. United States* (C.A. 9); *United States v. Lightfoot* (N.D. Ill.), awaiting re-trial; *United States v. Blumberg* (E.D. Pa.), pending on motion for new trial; *United States v. Russo* (D. Mass.) and *United States v. Weiss* (N.D. Ill.), awaiting trial. The remaining ten cases involve indictments returned in 1948 but never brought to trial against Foster, Dennis, Winter, Davis, Gates, Green, Winston, Hall, Thompson and Stachel, all of whom were also indicted for conspiring to violate the "advocacy" and "organizing" provisions of the Smith Act. See *United States v. Foster* (S.D.N.Y.), 80 F. Supp. 479 and *Dennis v. United States*, 341 U.S. 494.

The motion to dismiss the indictment

Petitioner moved to dismiss the indictment on the grounds, among others, that the membership clause of the Smith Act is unconstitutional and that section 4(f) of the Internal Security Act bars the prosecution of members of the Communist Party for the offense charged. The motion was denied. (R. 2-3.)

The evidence

It was not disputed that petitioner had been a member of the Communist Party throughout the indictment period and that, within the same period, he had held leading Party positions in Western New York.

The prosecution called ten witnesses. Six were former members of the Communist Party, three of whom had joined the organization as paid spies of the FBI (R. 282, 305-06, 377). The four remaining witnesses merely identified petitioner as having lived and worked in New Jersey under another name in the years 1953-1955 (R. 377-82, 396-412).

Lautner, the principal prosecution witness and a familiar figure in Smith Act cases,⁴ became a full-time employee of the Department of Justice after the Communist Party expelled him in 1950 (R. 175, 196). As in the *Yates* case, *supra*, where he testified, Lautner gave a detailed account of his career in the Communist Party from the time he joined in 1929. He testified about numerous conversations, meetings and conventions and recounted what he had been taught and had himself taught in Party schools (R. 5-187). With the exception noted later, none of Lautner's testimony was connected with petitioner in any way.

⁴ He has testified in every Smith Act trial since *Dennis, supra*.

Lautner also served as the vehicle for the introduction in evidence of the same mass of Communist literature which was introduced through him in *Yates* (e.g., R. 28, 32-33, 42-43, 62-63). Many of these books and articles were not shown to have been known to, much less ever read by, petitioner.

Lautner testified that it was the "common understanding" of Party "initiates" that the provisions of the Party constitution upholding the Constitution of the United States and providing for the expulsion of members advocating force and violence were "double talk", "protective language", and "aesopian". He further testified that the Party's "ultimate aim" was to destroy monopoly capitalism and establish socialism in this country and that, in his opinion, the Party would resort to "force, challenge and violence" for the accomplishment of this objective. (R. 187-96.)

Lautner's only significant contacts with petitioner occurred in 1949 when the former was assigned to set up a so-called "underground" Party structure in New York. In connection with this work, Lautner had several conversations with petitioner about setting up an underground organization in the Buffalo area and arranged to supply him with a photo-offset press and mimeograph machines. (R. 168-75). There was no evidence as to the activities, if any, engaged in by the underground in Buffalo or elsewhere. Lautner testified that one of the purposes of establishing an underground structure was to enable the Party to work for the restoration of a legal status in the event it should be outlawed and to provide printing and mimeographing equipment for use if commercial facilities became unavailable to it. (R. 200-02):

The witness Dietch had been a member of the Young Communist League or the Communist Party, from 1933 to

1948 (R. 207, 232, 235). He and petitioner, who were high school classmates, joined the Young Communist League together and attended its educational (R. 207-08). In later years, he saw petitioner at Party meetings and conventions (R. 233). The only incident to which he testified involving even remotely relevant advocacy occurred at a Young Communist League educational in 1935. There, the instructor, in Noto's presence, stated that "since no ruling class in history had ever been known to willingly surrender its state power without a violent conflict . . . it would be historically necessary for us to resort to forceful and violent means to overthrow our own ruling class." (R. 255.)

Dietch further testified that in March, 1951, when he was in the printing equipment business, petitioner sought his help in the purchase of two small presses for use in the event that the Party was deprived of access to commercial facilities. By arrangement with petitioner, Dietch met with a man whom he knew only as "Jack" to whom he sold two multilyth presses. (R. 235-38.)

The witness Greenberg had been a member of the Communist Party from 1947 to 1951 and met with petitioner frequently in 1949 (R. 382-83, 393). In that year, petitioner asked Greenberg about the possibility of setting up some printing equipment in the dry-cleaning establishment operated by the latter. However, after petitioner and another man inspected the premises, the project was abandoned. (R. 393-94.) In the spring of 1951, at petitioner's request, Greenberg stored some printing equipment in the cellar of his home. The equipment was picked up by two men in November of the same year after Greenberg requested petitioner to have it removed. (R. 395.) In the summer of 1951, petitioner asked Greenberg to locate some homes in which people could stay if they had

to go into hiding, but apparently nothing came of this request (R. 395).

Three witnesses, Chatley, Regan and Hicks, who had joined the Communist Party at the request of the FBI and were paid by it (R. 282, 305-06, 377) testified to conversations with petitioner and to speeches made by him or by others in his presence between 1943 and 1951. If believed, their testimony establishes that petitioner urged building the Communist Party among automobile, steel and electrical workers in the Buffalo area (R. 349, 356-57); opposed American intervention in Korea and advocated outlawing the A bomb (R. 276, 297-98, 361); stated on one occasion that "the capitalist class was its own grave digger", and was present when another speaker said that the Party "would destroy capitalism" (R. 263, 351); was concerned with the security of the Party in the face of Smith Act prosecutions and proceedings under the Internal Security Act (R. 298-99); and asked one of the witnesses to give refuge to an unidentified person who was evading arrest (R. 299-301).⁵

The picture of petitioner which emerges from the testimony is that of a devoted Communist who believed in the victory of socialism in this country (R. 298, 301). But the evidence is devoid of any statement by petitioner, or by anyone in his presence, advocating violent action, present or future, for the overthrow of the Government.⁶

Regan testified that in September, 1951, petitioner grew a moustache and stated that he "was going under a disguise to conceal himself". When Regan saw him for the last time

⁵ The person in question never appeared and nothing further occurred.

⁶ This appears from the summary of the evidence in the opinion below (R. 441-44).

a month later, petitioner said that he had been doing a great deal of travelling and "had to be on the move". (R. 368-69.)

The only testimony about petitioner subsequent to the fall of 1951 was given by the four remaining prosecution witnesses. They identified him as a man they had known in 1953-1955 as Louis Paresi who had lived with his wife and daughter in New Jersey where he had been employed by the Goodyear Rubber Company (R. 377-82, 396-412).

Petitioner called two witnesses⁷ and introduced a number of books and articles in evidence. Among the latter was the *History of the Communist Party of the United States*, by William Z. Foster, the Party chairman, published in 1952. This book contains the only evidence in the record of the advocacy of the Party within the period of the statute of limitations.⁸ It contains a detailed outline of the advocacy by the Party of what the author calls "the American road to socialism" through peaceful, democratic processes within the framework of the Constitution (R. 415-19).

The instructions

The trial court instructed the jury, *inter alia*, that it could not convict unless it found that the advocacy of the Party within the statutory period was reasonably calculated to incite persons to action for forcible overthrow as speedily as circumstances would permit (R. 427).

⁷ A librarian who testified that many of the Communist books introduced by the prosecution were available at the Buffalo public library (Tr. 1090-1105) and an FBI agent who described the circumstances of petitioner's arrest in Buffalo on August 29, 1955 (Tr. 1106-09).

⁸ From September 1, 1951 to November 8, 1954 (R. 423). See 18 U.S.C. 3282 as amended September 1, 1954, 68 Stat. 1145.

Since the case was tried before the Government had devised "activity" as an ingredient of the offense,⁹ no instruction was requested or given requiring the jury to find petitioner an "active" member as a prerequisite to guilt.

The sentence

Upon conviction, petitioner was sentenced to imprisonment for five years.¹⁰

The opinion below

Although the issue had not been submitted to the jury, the court below found the evidence sufficient to establish that petitioner was "an active member" of the Communist Party (R. 444).

The court stated (R. 449) that because the defendant was not charged with advocating forcible overthrow, "the incitement to action test enunciated in *Yates v. United States*, 354 U.S. 298, and applied by us in *Silverman, infra*,¹¹ and *United States v. Jackson*, 257 F. 2d 830 is inapplicable". Accordingly, it held the evidence sufficient (R. 444) without considering whether the Communist Party, to the knowledge of petitioner or in fact, advocated forcible overthrow in the form of an incitement to action rather than as a matter

⁹ In its supplemental memorandum on reargument in *Scales v. United States* and *Lightfoot v. United States*, Nos. 3 and 4, Oct. Term, 1957.

¹⁰ 18 U.S.C. 2385, as in force at the time of the indictment, provided a maximum fine of \$10,000 and a maximum prison sentence of ten years for each violation. By an amendment of July 24, 1956, these penalties were increased to \$20,000 and twenty years. 8 U.S.C. 1481, as amended September 3, 1954, provides that a citizen shall lose his nationality for a violation of the Smith Act. 42 U.S.C. 402(u), added by the Act of August 1, 1956, authorizes the court to impose, as an additional penalty for violation of the Smith Act, forfeiture of the accumulated social security credits of the accused.

¹¹ *United States v. Silverman*, 248 F. 2d 671.

of abstract political doctrine. The court also rejected petitioner's contentions that the membership clause is unconstitutional on its face and as applied and that section 4(f) of the Internal Security Act bars prosecution of the offense charged (R. 445-48).

Summary of the Argument

I

The ruling below that the evidence was sufficient to support the conviction is contrary to *Yates v. United States* and other applicable decisions of this Court. The decision in *Yates* required the Government, in the present case, to prove that, within the statutory period, (a) the Communist Party advocated forcible overthrow in language calculated to incite persons to future forcible action, and (b) the petitioner knew that the advocacy of the Party was of this character and quality. In addition, the indictment required proof that petitioner had the specific intent of bringing about violent overthrow as speedily as circumstances would permit. The evidence was palpably insufficient to prove any of these elements of the offense.

A. There was a failure of proof as to the advocacy of the Communist Party.

Yates held that the evidence in that case failed to establish that the Party advocated action for forcible overthrow. In consequence of this decision, twelve of the thirteen then pending Smith Act conspiracy cases were terminated in favor of the defendants, eight by dismissing the indictments on motion of the Government. The action of the Government in dropping these cases would appear to be an acknowledgment that it lacked evidence to supply what *Yates* held was the deficiency in its evidence concerning the advocacy of the Communist Party.

The evidence of Party advocacy introduced by the Government in this case does not differ in any material respect from the evidence that *Yates* found "strikingly deficient". This is demonstrated by a detailed comparison of the evidence in the two cases. Furthermore, the evidence in the present record is substantially the same as that which the Court of Appeals for the Second Circuit, in *United States v. Silverman* and *United States v. Jackson*, held insufficient to prove that the party advocated forcible overthrow in the sense of an incitement to action.

The court below affirmed the conviction only by holding *Yates*, *Silverman* and *Jackson* "inapplicable" in a prosecution under the membership clause on the theory that the accused is not charged with personal advocacy of forcible overthrow. This holding is plainly erroneous. The gravamen of the offense is membership in a group which advocates forcible overthrow and there is nothing in the statute or legislative history which can possibly give one connotation to advocacy when engaged in by an individual and quite another to advocacy by a group.

The evidence was insufficient for the further reason that the only evidence of Party advocacy within the statutory period was offered by petitioner and establishes that during that period the Party advocated peaceful means for the establishment of socialism in this country. Hence, a reversal would be required even on the untenable construction given the statute by the court below.

B. There was a failure of proof that petitioner had guilty knowledge or intent.

1. There was no evidence that petitioner knew that the Party advocated overthrow in the sense of a call to future forcible action. Although the evidence traced petitioner's membership and activity over an eighteen year period, there

is not a suggestion that he so much as predicted forcible overthrow, much less advocated action to achieve it. The one instance in the record in which any reference was made to forcible overthrow in petitioner's presence occurred in 1935, was patently no more than a prediction about future events, and falls far short of an incitement to action. The holding below that guilty knowledge was proved is contrary to this Court's decisions in *Nowak v. United States* and *Maisenberg v. United States*.

2. The specific intent charged in the indictment may not be imputed to a member of the Communist Party from the fact—if established—of his knowledge that the organization engaged in illegal advocacy. Petitioner's alleged intent could be proved only by additional evidence that he had the deliberate and specific purpose of effectuating the forbidden objective. There was no such proof. The holding below that guilty intent was proved is contrary to the decision of this Court in *Schneiderman v. United States*.

Since the evidence was palpably insufficient on each of the three elements of the offense and since the Government was under no misapprehension as to its burden of proof, the case is one in which, as stated in *Yates*, acquittal is "unequivocally demanded."

II

The admission of prejudicial evidence that was incompetent, irrelevant and remote requires a reversal.

A. Lautner's opinion testimony should have been excluded.

The personal opinion of the witness that socialism can be achieved in this country only "by force, challenge and violence" had no tendency to prove that this was the view of the Communist Party or of petitioner. Moreover, the issue was not whether the Party believed that resort to violence would ultimately be necessary but whether it *presently advocated* violent overthrow in the future. Evidence of the former is not probative of the latter.

Lautner's inflammatory conclusions about the liquidation of Communist Party leaders in Eastern European countries were not shown to have been shared by the Communist Party or petitioner and do not have the slightest relevance to any issue in this case.

Lautner's opinion that it was the "common understanding" of "initiates of the Party" that certain provisions of the Party constitution were "protective language" was incompetent since there is no basis in the record for imputing this conclusion to petitioner.

B. Testimony by Lautner and Greenberg concerning third party acts and declarations outside of petitioner's knowledge should have been excluded. Inflammatory books and articles which Lautner testified he had studied but which were not shown to have been known to petitioner should likewise have been excluded.

1. The evidence in question was incompetent. Petitioner's membership in the Communist Party does not make

him vicariously liable for acts of the Party, its officers or members which were not authorized or participated in by him. And the rule making the declaration of a conspirator competent against his co-conspirators is limited to cases where the indictment charges a conspiracy. Moreover, since no conspiracy was charged, petitioner was denied the protection of instructions on the prerequisites to the application of the co-conspirator rule.

2. The evidence in question was also irrelevant. The ultimate issue of fact was whether petitioner knew the Communist Party to be an organization that advocated action for violent overthrow. That fact could be proved only by evidence that petitioner himself advocated such action or that an authorized Party spokesman did so to his knowledge. The evidence in question was also too remote to be relevant since all of it antedated the statutory period and much of it antedated the enactment of the Smith Act.

The Government stakes its defense of the constitutionality of the membership clause on the fact that the statute requires proof of knowledge by the accused that the advocacy of the organization was illegal. Since petitioner's conviction was secured on evidence of Party advocacy of which petitioner was ignorant, the Government's premise requires a reversal on the ground that the statute was unconstitutionally applied.

III

Prosecution of the offense charged in the indictment is barred by section 4(f) of the Internal Security Act which provides that, "Neither the holding of office nor membership in any Communist organization by any person shall constitute per se a violation of subsection (a) or subsection (c) of this section or of any other criminal statute."

It is obvious from the reference to "any other criminal statute" that Congress believed membership per se to be a crime under some law other than the Internal Security Act. The "only other criminal statute on the books which might have been applicable to Communist Party members by virtue of their membership was the membership clause of the Smith Act. Since the membership clause makes knowledge that the organization has an illicit purpose an element of the offense, the term "membership per se" must have been intended to embrace membership with such knowledge.

A construction of the term "per se" to exclude membership or officership with knowledge of the purpose of the organization would also negate the immunity which section 4(f) provides against prosecutions under section 4(a). An analysis of the terms of the latter section and its setting in the Act demonstrates that section 4(f) can be meaningful in relation to violations of section 4(a) only if it provides immunity to a member or officer of a Communist organization who has knowledge that the purpose of the organization is to establish within the United States a totalitarian dictatorship under foreign control.

The reading of section 4(f) for which petitioner contends is confirmed by its legislative history. The purpose of the section was to insure the enforceability of the registration requirement of the Internal Security Act by making the privilege against self-incrimination unavailable to officers and members of Communist organizations as a defense for failure to register. The reference to "any other criminal statute" was added to the section only after repeated warnings in the Senate and House that the immunity conferred by section 4(f) in its original form was inadequate because it did not provide immunity from prosecution under the membership clause of the Smith Act.

The fact that Congress intended to immunize Communists from prosecution under the membership clause appears from the legislative history of the Humphrey amendment to the Communist Control Act. That amendment proposed to create a crime identical with the one charged in the indictment by making it an offense to be a member of the Communist Party with knowledge of its alleged seditious purpose. The amendment was defeated only because of representations by the Attorney General and Congressional leaders that it would make membership per se a crime, repeal an essential feature of section 4(f), and nullify the registration provisions of the Internal Security Act.

The savings clause of the Internal Security Act does not override the reference in section 4(f) to "any other criminal statute" since it is well established that a general savings clause cannot prevail over express provisions in the body of the enactment.

IV

The membership clause of the Smith Act is unconstitutional on its face and as applied. As written, it authorizes the conviction of one who is opposed to violent revolution and who joined the organization for some entirely legitimate purpose. Likewise, a conviction is authorized of an accused who is a passive member or who confines his activities to peaceable advocacy and conduct. The Government proposes to obviate these infirmities (1) by interpolating specific intent as an element of the offense and (2) by limiting the reach of the statute to "active" members.

Both as written and with the proposed embellishments, the membership clause differs in vital respects from the "advocacy" and "organizing" provisions which were sustained in *Dennis v. United States*. The latter provisions punish individuals for their own advocacy or for organiz-

ing to engage in advocacy. The membership clause, in contrast, penalizes an individual because of the advocacy of other members of the group to which he belongs. It is not advocacy but association that the clause makes criminal.

Association with a group engaged in advocacy is within the protection of the First Amendment and is also a "liberty" protected by due process. Accordingly, the constitutional issues presented are (a) whether the First Amendment and due process permit the proscription of the kind of association which the statute punishes and, if so, (b) whether the statute was constitutionally applied. Petitioner's discussion of these issues is addressed to the questions stated in the Court's order setting *Scales* for reargument, although not in the sequence which the order enumerates.

A. The statute, as interpreted by the Government contravenes the clear and present danger doctrine.

1. Consideration is first given to the question as to whether the clear and present danger doctrine is applicable either with respect to the accused or with respect to the group described in the statute.

(a) Although the doctrine has generally been applied in cases involving restraints on speech, it is equally applicable to the First Amendment right of assembly or association. The Government's argument that the specific intent it interpolates into the statute makes the doctrine inapplicable repeats a contention it advanced in *Dennis* and which the Court rejected. The fallacy of the argument is also demonstrated by the decision in *Schenck v. United States*. The Government's reliance on remarks of Justices Holmes and Brandeis in *Abrams v. United States* and *Whitney v. California* is misplaced. At most, these mean that an intent to produce an *imminent* danger dispenses with the necessity of proof that the danger is, in fact, immediate.

Since this is not the intent that the indictment charges, the remarks relied on are inapplicable, even if the membership clause imports the specific intent that the Government seeks to interpolate.

(b) Whatever the nature of the considerations embodied in the clear and present danger doctrine may be thought to be, they focus upon the consequences of the particular act which is the object of the restraint in question. Since the membership clause restrains association, the question under the doctrine must be whether the association occurs in such circumstances and is of such a nature as to create a clear and present danger of an attempt at forcible overthrow, the evil that the Smith Act seeks to prevent.

It does not follow from the validation of the "advocacy" and "organizing" provisions of the Act in *Dennis* that all of the other proscriptions of the Act are constitutional merely because the statute links them in some fashion to the forbidden advocacy. The validity of each proscription must be judged independently by determining whether the conduct which it penalizes can, under any circumstances, create a clear and present danger. The correctness of this proposition is demonstrated by an examination of the decisions in *Dennis* and *Yates*.

Hence, it is the membership of an accused in an organization that advocates forcible overthrow and not the advocacy of the organization that must be looked to for the source of the danger in a prosecution under the membership clause. This result is required by *De Jonge v. Oregon*, as an analysis of that decision shows.

The Government's argument that the clear and present danger doctrine cannot be applied with respect to the membership of the accused because to do so would require "writing the Act off the books" begs the question. The

Government's contention that the doctrine "is to be applied to the organization" and that it is the aggregate "contribution" of all "active" members "that gives the Party power" is analyzed. It is shown that this contention comes down to the fallacious proposition that it is the existence of danger from the advocacy of the organization and not from membership which is relevant under the membership clause.

Furthermore, the Government's aggregate "contribution" theory is based on the proposition that organizational advocacy of forcible overthrow creates a clear and present danger when the organization has a sufficiently large, but unspecified, number of members who confine themselves to innocent activity. This is absurd and contravenes the decision in *De Jonge*.

2. The statute on its face, with or without the interpolation of specific intent and "activity" contravenes the clear and present danger doctrine. This is too plain for argument if, as shown, the doctrine is applicable with respect to the membership of the accused. For, as the Government concedes, no individual can create the danger of forcible overthrow.

The membership clause is likewise invalid, with or without the proposed embellishments, if it be assumed that the relevant source of "danger" is not individual membership but organizational advocacy of violent overthrow. For "danger" from that source can be prevented by statutory provisions narrowly drawn to prohibit the advocacy. In fact, the Smith Act contains such provisions. Hence, the membership clause is an unnecessary and, therefore, an unwarranted invasion of the member's right of association.

3. The statute, as applied, contravenes the clear and present danger of doctrine. This is so whether the doctrine is applied with respect to the conduct of petitioner, the

advocacy of the Communist Party, or the aggregate "contribution" of all "active" members to the objective of forcible overthrow.

The evidence of petitioner's activities within the period of the statute of limitations shows that he did nothing even remotely "dangerous". The only evidence of Party advocacy during this period was that the Party chairman had advocated the achievement of socialism by peaceful and constitutional means. There was no evidence whatever of activity by other Party members of the size of the membership within the statutory period.

Moreover, the international setting in November, 1954, the date of the indictment, was characterized by the absence of any active battlefield in the world, a marked relaxation of international tensions and the recession of the war danger. Thus, the background factors which *Dennis* stressed as creative of the danger found in that case had ceased to exist at the time of petitioner's indictment.

Accordingly, even under the reformulation of the clear and present danger doctrine which *Dennis* enunciated, the balance which must be struck in this case between the magnitude of the danger and the values inherent in the First Amendment requires an acquittal. However, should the Court think otherwise, there are cogent reasons for re-examining the interpretation given the clear and present danger doctrine by the prevailing opinion in *Dennis*.

B. The statute as interpreted by the Government imputes guilt solely from association.

Conspiracy law does not impute guilt from association since it punishes an accused for his personal participation in an agreement to commit a crime. In contrast, the membership clause proscribes association with a group that

advocates forcible overthrow even though the accused has not agreed to such advocacy or performed any act in furtherance of it. This is clear under the membership clause as written. The additional ingredients which the Government proposes to supply do not cure the defect.

The specific intent which the Government reads into the statute cannot substitute for participation in the illegal agreement required in conspiracy cases. For that intent is not an intent to further the forbidden *advocacy* of the organization or even to bring about the substantive evil through or with the aid of the organization of which the accused is a member. It is merely a generalized intent to bring about forcible overthrow by some unstated means. Moreover, this intent plus membership with knowledge of the group's illegal advocacy could not, in any event, give rise to a conclusive presumption that the accused thus became a party to an agreement to engage in such advocacy. The question would still be one for the jury, just as participation by an accused in the conspiratorial agreement is a jury question in every conspiracy case. Since the membership clause as construed by the Government substitutes a conclusive presumption for jury determination of this question, the statute violates due process.

The Government's "activity" factor is of no help in bringing the statute within the ambit of conspiracy law. For a member is "active" who confines himself to innocent and constitutionally protected activity not in furtherance of the group's illegal advocacy or illegal objective. The Government's assertion that "active support of any kind aids the organization in achieving its own illegal purpose" is unwarranted in fact and contrary to the decision in *De Jonge*. At most, the purpose and effect of a member's activity presents a jury question as in the case of alleged overt acts in conspiracy prosecutions. Since the "activity"

factor removes this question from the consideration of the jury, it deprives an accused of jury trial of a fact essential to guilt.

In fact, the Government's defense of the membership clause as a conspiracy statute rests on an inference it draws from the supposed conspiratorial character of membership in a particular organization—the Communist Party. But the statute authorizes a conviction without proof that the membership of the accused was of this character. Thus, on the Government's own showing, the statute violates due process by authorizing a conviction for a crime neither charged nor proved.

The Government's argument that a Communist Party member is *ipso facto* a conspirator relies largely on Justice Jackson's partial concurrence in *A. C. A. v. Douds*. But the Government ignores the passages in that opinion which plainly foreshadow the invalidity of the membership clause.

The Government, in this case, has the dual objective of validating the membership clause by analogizing it to a conspiracy statute and, in so doing, of avoiding the burden of proof which embarrasses it in Smith Act conspiracy cases. The Constitution makes these objectives irreconcilable.

C. The statute, as written, is unconstitutional for additional reasons.

1. Lacking the element of criminal intent, the statute penalizes membership for an innocent and lawful purpose. Decisions of the Court flatly hold that such a statute is unconstitutional. *Whitney v. California* and *Bryant v. Zimmerman*, relied on by the Government, are inapplicable.

2. The Government makes no serious attempt to defend the application of the statute to a passive member or one whose activity is confined to attendance at meetings. Nor

does it press the proposition that the statute can be saved by confining its application to members whose activity is peaceable. Implicit in its argument is the contention that the membership clause is constitutional if restricted to members whose conduct would authorize convictions for conspiracy to violate the "advocacy" provision of the Smith Act. But the Government cannot write this restriction into its definition of an "active" member without making the membership clause a carbon copy of the offense of conspiring to advocate forcible overthrow, a result which Congress obviously could not have intended.

D. The interpretations of the statute proposed by the Government are impermissible.

1. The argument for interpolating specific intent into the membership clause is based on a misapplication of the *Dennis* decision. *Dennis* did not read specific intent into the "advocacy" and "organizing" provisions of the Smith Act on the ground that it was required by constitutional considerations but because one who advocates or organizes for forcible overthrow must be presumed to intend the probable consequences of his acts. This nexus between act and intent is lacking in the case of the offense defined by the membership clause. A person who becomes a member of an organization knowing it to advocate forcible overthrow need not necessarily intend to accomplish that objective. He may have joined for the purpose of effectuating legitimate policies of the organization or to reform it.

Furthermore, an examination of the various provisions of the Smith Act demonstrates that the omission of specific intent from the membership clause was deliberate. Analysis of *Screws v. United States* and *A. C. A. v. Douds*, relied on by the Government, shows that they are authority for rejecting its position.

2. If the Government's "activity" factor is an element of the offense, the indictment must be dismissed for failure to charge it. Moreover, a reversal would be required since the issue of petitioner's "activity" was not submitted to the jury.

There is no basis for writing the particular standard of "activity" which the Government has chosen into the membership clause. For there is no indication that Congress intended to incorporate this standard into the statute rather than some other standard or none at all. Under these circumstances, to interpolate the Government's definition of "activity" is not to interpret but to legislate.

Adoption of the Government's proposal that the "activity" factor should be applied by the courts as a constitutional limitation on the application of the statute would mean that legislation could never be invalidated for inherent unconstitutionality. Moreover, the proposal would deprive an accused of a jury trial on those ingredients of the offense which are supplied by judicial construction. The argument that this is permissible in the case of the "activity" factor rests on a supposed analogy to the clear and present danger doctrine. This argument is shown to be fallacious.

In any event, since the evidence shows that petitioner was not an "active" member within the statutory period, application of the Government's proposed constitutional limitation would require his acquittal.

ARGUMENT

I

The Ruling Below That the Evidence Was Sufficient to Support the Conviction Is Contrary to *Yates v. United States* and Other Applicable Decisions of This Court.

Yates v. United States, *supra*, held (at 319-20) that the Smith Act "was aimed at the advocacy and teaching of concrete action for the forcible overthrow of the Government, and not of principles divorced from action".

Petitioner was charged with membership in the Communist Party, knowing that it engaged in advocacy proscribed by the Smith Act. Obviously, he could not know that the organization was so engaged if, in fact, it was not. The Government was therefore required to prove that, within the period of the statute of limitations, (a) the Communist Party advocated forcible overthrow in language calculated to incite persons to future forcible action, and (b) the petitioner knew that the advocacy of the Party was of this character and quality.¹² In addition, the indictment alleged (R. 1) and proof was therefore required that petitioner had the specific intent of bringing about violent overthrow as speedily as circumstances would permit.

The evidence was palpably insufficient to prove any of these elements of the offense, let alone all of them.

A. THE ADVOCACY OF THE COMMUNIST PARTY

Yates held that the evidence in that case failed to establish that the Communist Party advocated action for forcible overthrow. The Court said (at 329-30):

¹² We show, *infra*, pp. 39-40, that the Government was required to prove (a) by evidence of facts within petitioner's knowledge.

"... both the record and the Government's brief in this Court make it clear that the Government's thesis was that the Communist Party, or at least the Communist Party of California, constituted the conspiratorial group, and that membership in the conspiracy could therefore be proved by showing that the individual petitioners were actively identified with the Party's affairs and thus inferentially parties to its tenets. This might have been well enough towards making out the Government's case if advocacy of the abstract doctrine of forcible overthrow satisfied the Smith Act, for we would at least have little difficulty in saying on this record that such was one tenet of the Communist Party; and there was no dispute as to petitioner's active identification with Party affairs. But when it comes to Party advocacy or teaching in the sense of a call to forcible action at some future time we cannot but regard this record as strikingly deficient. At best this voluminous record shows but a half dozen or so scattered incidents which, even under the loosest standards, could be deemed to show such advocacy. Most of these were not connected with any of the petitioners, or occurred many years before the period covered by the indictment."

Subsequent to the *Yates* decision, twelve of the thirteen then pending Smith Act conspiracy cases were terminated in favor of the defendants,¹³ four by directions for judgments of acquittal and eight by dismissing the indictments on motion of the Government.¹⁴ The action of the Govern-

¹³ There have been no further indictments since the decision in *Yates*:

¹⁴ The *Yates* indictment was dismissed as to the nine defendants whom the Court ordered retried. *United States v. Silverman*, 248 F. 2d 671, *United States v. Jackson*, 257 F. 2d 830, *Huff v. United States* and *Fujimoto v. United States*, 251 F. 2d 342, directed judg-

ment in procuring the dismissal of the latter indictments would appear to be an acknowledgment that it lacked evidence to supply what Yates held was the deficiency in its proof concerning the advocacy of the Communist Party.¹⁵ For if evidence had been available to establish the Communist Party as the "conspiratorial group" it is hardly conceivable that the Government would have abandoned the effort to convict at least some of the party leaders named in these indictments as participants in the conspiracy.¹⁶ Hence, the Government's action in dropping conspiracy prosecutions against these Party leaders belies its assertion that the evidence in this case is sufficient to establish that the Communist Party was a "conspiratorial group"—i.e., a group that advocates forcible overthrow "in the sense of a call to forcible action at some future time."¹⁷

ments of acquittal for all of the defendants. *United States v. Kuzma*, 249 F. 2d 619, directed judgments of acquittal for certain of the defendants and the indictment was later dismissed as to the others. The indictments in *Mesarosh v. United States*, 352 U.S. 1, *Wellman v. United States*, 253 F. 2d 601, *Sentner v. United States*, 253 F. 2d 310, and *Brandt v. United States*, 256 F. 2d 79, were dismissed after the cases had been remanded for new trials. The indictments in *United States v. Russo* (D. Mass.) and *United States v. Carrion* (D. P.R.) were dismissed before trial. The thirteenth case, *Bary v. United States* (C.A. 10) is pending on appeal from convictions obtained after a re-trial.

¹⁵ In announcing the motion to dismiss the indictment in the *Brandt* case, *supra*, the United States Attorney said, "We can't meet the requirements set down by the Supreme Court in the Yates case." *New York World-Telegram and Sun*, Aug. 19, 1959. Similar explanations were made of the motions to dismiss the other indictments.

¹⁶ The eight indictments which the Government moved to dismiss involved forty-seven state leaders of the Communist Party, a number of whom had also been members of the Party's national committee.

¹⁷ The memorandum for the United States in response to petitioner's petition for certiorari, concedes (pp. 5-6) that the Yates test of advocacy is applicable to the advocacy of the organization in a prosecution under the membership clause.

Furthermore, as the Government cannot but acknowledge, the evidence of the advocacy of the Communist Party which it introduced in this case does not differ in any material respect from the evidence that *Yates* found "strikingly deficient". This appears from a comparison of the evidence on the subject in the present record with that introduced in *Yates* and outlined by the Government in detail in Appendix A of its brief in that case, in this Court (pp. 138-47).

In both cases, the evidence concerning the advocacy of the Communist Party consisted of the following:

1. The facts and circumstances surrounding the 1945 dissolution of the Communist Political Association, the reconstitution of the Communist Party, and its rededication to the principles of Marxism-Leninism (R. 88-105; *Yates* App. A, pp. 144-47).

2. The so-called "classical" writings of Marx, Engels, Lenin and Stalin, including the *Communist Manifesto*, Lenin's *State and Revolution* and Stalin's *Foundations of Leninism and Problems of Leninism* (R. 28, 62-63; *Yates* App. A., pp. 149-60); the *History of the Communist Party of the Soviet Union* (R. 66; *Yates* App. A, p. 175); the 1921 *Conditions of Affiliation to the Communist International* and the 1928 *Program* of that organization (R. 32-33, 42-43; *Yates* App. A, pp. 159, 170, fn. 50); and writings of American Communists such as *Marxism and American Exceptionalism* by Foster and *The Communist Party, a Manual on Organization* by Peters (R. 50-51, 110; *Yates* App. A, pp. 162, 175, fn. 56).

3. The testimony of Lautner that he had studied some of the foregoing books and articles in Communist Party schools in 1930 and 1941, and evidence that some of them

were referred to in study outlines issued by the Party and were used in Party schools subsequent to 1945 (R. 27-43, 63-64, 68-83, 125-29, 218-19, 266; *Yates* App. A, pp. 149-164).

4. Evidence concerning the structure of the Communist Party and the principle of "democratic centralism" requiring strict adherence to Party decisions (R. 156-63, *Yates* App. A, pp. 164-70).

5. Evidence, primarily in the testimony of Lautner, concerning the security measures adopted by the Party after the indictment of the *Dennis* defendants in 1948, the setting up of an "underground" Party structure, providing it with mimeograph machines and printing presses, and arranging hide-outs for Party leaders (R. 164-73; *Yates* App. A, pp. 170-74).

6. Evidence of the Party's industrial "concentration policy", i.e., its emphasis on recruiting members among and attempting to influence workers in the basic industries (R. 206, 692, 872, 908-10; *Yates* App. A, pp. 174-77).

We are confident that the Government will be unable to point to a single item of significant evidence in this case touching on the advocacy of the Communist Party which is not identical with or paralleled by evidence in the *Yates* record.¹⁸ Moreover, the evidence in the present record differs in no material detail from that which the Court of Appeals for the Second Circuit has twice held insufficient to prove that the Communist Party advocated forcible overthrow in the sense of an incitement to action. *United States*

¹⁸ On the contrary, the evidence in *Yates* along the six lines of proof described above is considerably more detailed and voluminous than in the present case.

v. *Silverman*, 248 F. 2d 271, cert. den., 355 U.S. 942; *United States v. Jackson*, 257 F. 2d 830.¹⁹

The court below affirmed the conviction in the face of the decisions in *Yates*, *Silverman* and *Jackson* only by holding them "inapplicable" to a prosecution under the membership clause, on the theory that the accused is not charged with personal advocacy of forcible overthrow (R. 449-50). This holding is plainly erroneous. The gravamen of the offense is membership in a group which advocates forcible overthrow. There is nothing in the statute or the legislative history which can possibly give one connotation to advocacy when engaged in by an individual and quite another to advocacy by a group. On the contrary, *Dennis v. United States*, *supra*, at 502, 512, held the incitement to action test applicable to the offense of organizing a group which advocates violent overthrow. And see *Nowak v. United States*, 356 U.S. 660, 665, 667.

By erroneously construing the statute, the court below dispensed with the necessity of determining whether the evidence of advocacy by the Communist Party satisfied the incitement to action test. This appears from its summary of the evidence (R. 440-41) which likewise demonstrates that the test was not satisfied.

The evidence concerning the advocacy of the Communist Party was insufficient for a further reason. As the opinion below tacitly acknowledges (R. 441-42), the Government offered no evidence that the Party advocated forcible overthrow, even as a matter of abstract doctrine, within the period of the statute of limitations from September 1, 1951 to the return of the indictment. The only evidence of Party

¹⁹ The evidence concerning the advocacy of the Party is described in detail in the *Silverman* opinion (at 682-86) and the *Jackson* opinion notes (at 832, fn. 5) that there was no substantial difference in the evidence in the two cases.

advocacy during the statutory period was offered by petitioner. It consisted of excerpts from the *History of the Communist Party of the United States*, written by William Z. Foster, the Party chairman, and published in 1952 (R. 415-19). As we have seen (*supra*, p. 8) the book contains a detailed statement of the means which the Party advocated for the establishment of a socialist government in this country, all of which are peaceful.

The court below ignored the Foster book. It held (R. 441-42) that the evidence of the teachings and activity of the Party prior to the statutory period "and the absence of any evidence of accomplishment or abandonment of their purpose was sufficient to support an inference that the character of the Party as a group dedicated to the violent overthrow of the Government, established in prior years, continued unaltered through the statutory period". However, this inference, if otherwise permissible, was rebutted by the uncontradicted evidence that the advocacy of the Party within the statutory period was peaceable. Hence, a reversal of the conviction would be required even on the untenable construction given the statute by the court below.

B. THE KNOWLEDGE AND INTENT OF THE PETITIONER

For the purpose of this branch of the argument, we will assume that the Government proved that, within the statutory period, the Communist Party incited action for forcible overthrow. Even on that assumption, the conviction cannot stand. For there was a complete failure of proof that petitioner had guilty knowledge or intent.

1. Knowledge

The Government's evidence traced petitioner's membership and activities in the Young Communist League and the Communist Party from his high school days in 1933 to 1951.

Yet there is not a suggestion in the record that he ever so much as predicted forcible overthrow, let alone urged action to achieve it. Moreover, the record contains only one instance in the eighteen year period it spans in which any reference was made to forcible overthrow in petitioner's presence. This was said to have occurred in 1935 when an instructor in a Young Communist League class stated that resort to forcible overthrow "would be historically necessary" (R. 255). Assuming the accuracy of the witness' recollection after a lapse of more than twenty years and the relevance of anything so remote, the statement is patently no more than a prediction or expression of opinion about future events and falls far short of an incitement to action. The Court has held statements much closer to the boundary between advocacy of belief and advocacy of action, when made by the accused himself, insufficient to prove knowledge that the Communist Party incites to violent overthrow. *Nowak v. United States*, 356 U.S. 660; *Maisenberg v. United States*, 366 U.S. 670.²⁰

These cases further hold (*Nowak* at 666) that the fact that an accused is an active member and functionary of the Party does not of itself suffice to prove his knowledge of the Party's illegal advocacy. Yet, there is nothing else in this record that bears on the issue of petitioner's knowledge. His activities in the Party "underground" are wholly irrelevant. For there is no evidence that the "underground" engaged or planned to engage in illegal advocacy, much less that petitioner knew of such purpose. All that the evidence shows is that elaborate measures of concealment were taken to safeguard the Party and its members from what was regarded as persecution for their political unorthodoxy

²⁰ *Nowak* (at 665) so held "even assuming that the evidence of the illegal advocacy of the Party was sufficient," citing the *Yates* case, *supra*.

(R. 200-02, 298-99). However ill advised these measures may have been, they furnish no evidence of criminality. *United States v. Silverman*, *supra*, at 685, fn. 5. Cf. *Ingram v. United States*, 360 U.S. 672, 679-80. Moreover, as the series of Smith Act conspiracy prosecutions and their disposition shows (*supra*, pp. 26-27), the fears which inspired resort to the "underground" proved not wholly without foundation.

Because the court below read incitement out of the membership clause, it dealt with the issue of petitioner's knowledge (R. 442-44) as though knowledge that the Party taught the abstract doctrine of forcible overthrow was sufficient to convict. We do not believe that there was proof even of this sort of knowledge. In any event, the evidence was patently insufficient to prove knowledge of the kind that the statute requires as a requisite to guilt.

2. Intent

The indictment (R. 1) charges petitioner with the specific intent of bringing about forcible overthrow as speedily as circumstances would permit. This intent may not be imputed to a member of the Communist Party from the fact—if established—that he knew the organization to be engaged in illegal advocacy. As *Schneiderman v. United States*, 320 U.S. 118, 136, holds:

"... under our traditions beliefs are personal and not a matter of mere association, and that men in adhering to a political party or other organization notoriously do not subscribe unqualifiedly to all of its platforms and asserted principles."

To the same effect, see *Knauer v. United States*, 328 U.S. 654, 669; *Baumgartner v. United States*, 322 U.S. 665. Accordingly, petitioner's alleged intent could be proved only

by additional evidence that he had the deliberate and specific purpose of effectuating the forbidden objective. *Hartzell v. United States*, 322 U.S. 680.

There was no such evidence. As we have already shown, petitioner's acts and declarations over a twenty year period are devoid of the advocacy of violent revolution, even as a matter of abstract doctrine, and his stated belief in the ultimate establishment of socialism in the United States was unaccompanied by any suggestion of a resort to violence for the accomplishment of that end. Cf. *Hartzell v. United States*, *supra*, at 687, reversing a conviction for lack of proof of the requisite specific intent on evidence far more cogent than anything in the present record.

The court below nevertheless held (R. 442-44) that guilty intent had been proved. It relied on the same evidence which it found established guilty knowledge: petitioner's many years of membership and officership in the Communist Party, his acceptance of Party assignments, and his familiarity with the "classical" literature. The Court, however, has held similar evidence insufficient to prove that a Communist Party member believed in forcible overthrow or lacked attachment to the principles of the Constitution. *Schneiderman v. United States*, *supra*.

We have shown that the evidence in this record was palpably insufficient on each of the three elements of the offense charged in the indictment. The Government was under no misapprehension as to its burden of proof under the statute and the indictment.²¹ Accordingly, petitioner's acquittal "is unequivocally demanded." *Yates v. United States*, *supra*, at 328.

²¹ It did not share the misapprehension of the court below that the incitement to action test was inapplicable, but consented to the trial court's instruction on incitement (R. 427), and urged in its brief below (p. 2) that the standard enunciated in *Yates* was satisfied by the evidence.

II

***The Admission of Prejudicial Evidence That Was Incompetent, Irrelevant and Remote Requires a Reversal.**

In its attempt to prove that the Communist Party engaged in illegal advocacy, the Government introduced prejudicial opinions of its "expert", Lautner, which petitioner was not shown to have shared. It also introduced a mass of inflammatory evidence, much of it remote, about persons whom petitioner had never met, conversations and events of which he had no knowledge, and documents which he had never read. Hence, even if guilty knowledge and intent had been proved, the erroneous admission of this evidence would require a reversal.

A. LAUTNER'S OPINION TESTIMONY

Lautner testified that the dictatorship of the proletariat cannot be achieved in the United States by peaceful means but only "by force, challenge and violence". He did not ascribe this view to the Communist Party, much less to petitioner, but stated it only as a matter of his own opinion. (R. 194-95) The testimony was obviously incompetent. It was also irrelevant for two reasons. First the personal opinion of the Government's professional witness that force would be required to accomplish the Party's ultimate objective has no tendency to prove that this was the view of the Party or of petitioner. Second, the testimony would be irrelevant even if it were shown that the Party, to petitioner's knowledge, had subscribed to Lautner's opinion. For the issue under the statute and the indictment was not whether the Party believed that resort to violence would ultimately be necessary but whether it *presently advocated* action for violent overthrow in the future. Evidence of the former is not probative of the latter. *Yates*

v. *United States*, *supra*, at 330; *United States v. Silverman*, *supra*; at 685-86.

Lautner was also permitted to testify, as a matter of "expert opinion", that the Yugoslav Communist Party was expelled from the Communist Information Bureau, its leaders branded as "fascists, mad dogs", and the leaders of the Communist Parties of other Eastern European countries shot or hanged, all for refusing "to bend under Stalin's leadership" (R. 186-87). None of these inflammatory conclusions was shown to have been known to or shared by petitioner or the Communist Party. And, of course, none of them has the slightest relevance to any issue in this case.

Lautner further testified that it was the "common understanding" of "initiates of the Party" that the provisions of the Party constitution upholding American democratic principles and providing for the expulsion from membership of advocates of violence were "protective language" and "double talk" (R. 187-93). Neither Lautner nor any other witness ascribed knowledge of this interpretation of the constitution to petitioner and it does not appear that he ever discussed the subject. Moreover, Lautner did not state what he considered the qualifications of an "initiate" to be or that he included petitioner in that category.²² As we will show (*infra*, pp. 39-40), third party declarations not known to petitioner concerning the advocacy of the Communist Party are incompetent against him as well as irrelevant. *A fortiori*, Lautner's testimony as to the common understanding of "initiates" is inadmissible since, at most, it is a conclusion from the undisclosed declarations of unidentified third parties.

²² Lautner acknowledged that he could not testify as to the "common understanding" of Party members, and the question was then reframed to embrace only "initiates" (R. 187-93).

B. THIRD PARTY DECLARATIONS

The great bulk of the evidence introduced through Lautner was not connected with petitioner in any way.²³ Thus, he testified at length about his activities as a Party functionary in this country and Canada from 1930 to 1950, Party schools in which he studied or taught, conventions and meetings which he attended and conversations that he had with Party officials (R. 7-128). He also identified numerous books and articles which were introduced in evidence on the basis of his testimony that they had been used by him in Party schools or "reflect the activities in the Party" (R. 106, and see, e.g. R. 32, 41-43, 50-51).

Lautner testified, for example, that in 1935, he attended a meeting of Party organizers where Eisler, Peters and Steinberg instructed those present to infiltrate and build Party organizations within units of the National Guard (R. 17-18). Lautner stated that pursuant to these instructions, he undertook to secure Party recruits among Guard members at a New York City armory (R. 11-13). There was no evidence that petitioner knew of the 1935 meeting; was aware of the existence of Eisler, Peters or Steinberg,²⁴ or had knowledge of any Party policy with respect to the National Guard.

Again, Lautner testified that one Szanto, identified only as a teacher at a 1930 Party school and the editor of a Hungarian newspaper, taught that peaceful transition to socialism in this country had become impossible (R. 52-53, 55).

²³ His direct examination occupies 388 pages (Tr. 4-386) and accounts for one-third of the typewritten transcript of the evidence. Of this, only 23 pages (Tr. 290-302, 332-43) contain testimony connected with petitioner.

²⁴ Lautner identified Eisler as a representative of the Communist International, assigned to give leadership to the Party in this country, and Peters as the author of Peter's *Manual* (R. 14-15).

Further, Lautner testified that the *Conditions for Affiliation with the Communist International*, the *Program of the Communist International* and Peter's, *The Communist Party, a Manual on Organization* had been studied by him in Party schools in the 1930's (R. 32-33, 42-43, 50-51). On this foundation,²⁵ the documents were admitted in evidence and read from at length (R. 33-40, 43-44, 52-61) although it nowhere appears that petitioner was even aware of their existence. Obviously, they were introduced because their contents are more inflammatory than anything contained in current Communist literature or in the "classical" works with which petitioner was shown to be familiar.²⁶

The prosecution witness Greenberg was likewise permitted to testify to prejudicial third party declarations outside of petitioner's knowledge. The testimony was that in 1949, two Pittsburgh Party leaders instructed the witness to prevail upon the Young Progressives of America in that city to take up the defense of Party members who had been indicted for inciting to riot as a result of a demonstration against the exclusion of Negroes from a public swimming pool (R. 390-92).²⁷

²⁵ Lautner testified that the *Program of the Communist International* had been used in Party classes up to 1948 (R. 41). Peter's *Manual* was not used or referred to after 1936 (R. 51-52), and there is no evidence concerning the *Conditions of Affiliation* other than Lautner's testimony that it was used at a school in 1930.

²⁶ E.g., *The Program of the Communist International* speaks of "a combination of strikes and armed demonstrations and finally the general strike conjointly with armed insurrection against the state power of the bourgeoisie" (R. 38); the *Conditions of Affiliation* states that, "Persistent and systematic propaganda and agitation must be carried on among the Armed Forces, and Communist nuclei must be formed in every military unit" (R. 43); and Peter's *Manual* states that the *Program of the Communist International* and other decisions and resolutions of that organization "cannot be questioned in the Party" (R. 56).

²⁷ In addition to the fact that petitioner had no knowledge of this incident, the testimony has no conceivable relevance to the advocacy of forcible overthrow.

As the foregoing examples illustrate, each of the third party declarations admitted in evidence was prejudicial standing alone. Their cumulative impact and that of Lautner's opinion testimony was irretrievably to harm petitioner's chances of acquittal.

The declarations in question should have been excluded as incompetent and irrelevant.

1. It is elementary that the declarations of third persons outside the presence and knowledge of the accused are inadmissible against him unless, as in the case of co-conspirators, the relationship of the accused to the declarant imposes vicarious liability upon the former for acts of the latter. This is simply the procedural corollary of the fundamental principle that guilt is personal and, hence, that an accused may not be held criminally liable for the act of another which he has neither authorized nor ratified.

Petitioner's membership in the Communist Party did not make him vicariously liable for acts of the Party, its officers or members which were not authorized or participated in by him. *United States v. White*, 322 U.S. 694. And the rule which makes the declaration of a conspirator competent against his co-conspirators is limited to cases where the indictment charges a conspiracy. *United States v. Dennis*, 183 F. 2d 201, 230; *McWhorter v. United States*, 281 F. 119, 121; *Sorenson v. United States*, 168 F. 785, 792; *Barrett v. United States*, 33 F. 2d 115. Moreover, since no conspiracy was charged, petitioner was denied the protection of instructions on the prerequisites to the application of the co-conspirator rule.²⁸

²⁸ I.e., that before a jury can consider the declaration of a third party made in the absence of the accused as evidence against him, it must find that the declarant and the accused were members of the conspiracy and that the declaration was made pursuant to the conspiracy and in furtherance of its objectives. *Krulewitch v. United States*, 336 U.S. 440.

The prosecution and the trial court seem to have proceeded on the premise that because the first paragraph of the indictment (R. 1) alleges as a fact that the Communist Party advocates forcible overthrow, the allegation could be proved by evidence unconnected with petitioner, and that the hearsay rule was applicable only to evidence offered under the second paragraph of the indictment charging that petitioner had knowledge of such advocacy. It is too plain for argument, however, that the rule excluding third party acts and declarations, in the absence of authorization or ratification by the accused, cannot be circumvented by manipulating the form of the indictment.

Mr. Justice Jackson, concurring in *Krulewitch v. United States*, *supra*, at 449, wrote:

"However, even when appropriately invoked, the looseness and pliability of the [conspiracy] doctrine present inherent dangers which should be in the background of judicial thought wherever it is sought to extend the doctrine to meet the exigencies of a particular case."

Of course, conspiracy doctrine is not "appropriately invoked" in a case where no conspiracy is charged. Nor can the doctrine be extended "to meet the exigencies of the case" without abrogating the precept that guilt is personal.

2. The evidence in question was irrelevant as well as incompetent. The ultimate issue of fact for the jury was whether petitioner knew the Communist Party to be an organization that advocated violent overthrow. Accordingly, proof that the Communist Party engaged in illegal advocacy was relevant only if petitioner knew this to be the fact. Guilty knowledge may not be inferred from petitioner's active membership in the Party and his position as a functionary. It can be proved only by evidence that

petitioner himself advocated action for forcible overthrow or that an authorized Party spokesman did so to his knowledge. *Nowak v. United States, supra*; *Yates v. United States, supra*, at 330-31. Evidence of Party advocacy outside of petitioner's knowledge was therefore irrelevant.

The evidence in question was also too remote to have relevance. The Government was required to prove that petitioner knew that the Party engaged in illegal advocacy within the statutory period from September 1, 1951 to the date of the indictment. But none of Lautner's testimony reached beyond the termination of his membership in January 1950 (R. 5), and much of it dealt with events antedating the enactment of the Smith Act in 1940. The Government introduced no evidence of Party advocacy of any kind within the statutory period. Evidence introduced by petitioner established that, during this period, the Party advocated peaceful means for the establishment of socialism (*supra*, p. 8). Accordingly, even if current evidence of Party advocacy outside of petitioner's knowledge could somehow be said to be relevant, the evidence introduced through Lautner should have been excluded as remote.

The Government stakes its defense of the constitutionality of the membership clause as written on the fact that, at least, the statute requires proof of knowledge by the accused that the advocacy of the organization was illegal. But petitioner's conviction was secured on evidence of Party advocacy of which petitioner was ignorant. The Government cannot have it both ways. The evidence was inadmissible or the statute, as applied, is unconstitutional. Either alternative requires a reversal.

III

Prosecution of the Offense Charged in the Indictment Is Barred by Section 4(f) of the Internal Security Act.

Section 4(f) of the Internal Security Act (50 U.S.C., 783(f)) provides that, "Neither the holding of office nor membership in any Communist organization by any person shall constitute per se a violation of subsection (a) or subsection (c) of this section or of any other criminal statute."

The gravamen of the indictment is that membership in a Communist organization (the Communist Party) with knowledge of its alleged illicit advocacy *does* constitute a violation of a criminal statute—i.e., the membership clause of the Smith Act. Accordingly, section 4(f) bars the prosecution of the offense charged in the indictment unless membership in the Communist Party, when accompanied by knowledge of the alleged illicit advocacy, is something more than membership "per se," and is therefore not included within the immunity which section 4(f) confers.

An examination of the language and legislative history of section 4(f) demonstrates that the purpose, intent and effect of the section was to bar the prosecution of offenses based on membership or officership in the Communist Party and specifically to bar the prosecution of Communists under the membership clause of the Smith Act.

It is obvious from the face of section 4(f) that Congress was of the opinion that membership per se did constitute a violation of some criminal statute other than the Internal Security Act. Otherwise, there would have been no point in the reference to "any other criminal statute." At the time the Internal Security Act was enacted, there was no statute in existence making membership in the Communist Party

criminal when not accompanied by knowledge of the alleged seditious character of its advocacy. The only criminal statute on the books which might have been applicable to members of the Communist Party by virtue of their membership was that portion of the Smith Act under which the indictment is laid.

It follows therefore that the reference in section 4(f) to "any other criminal statute" is meaningful only if it refers to the membership clause of the Smith Act. But, under that clause, membership in the Communist Party is not a crime unless the member has knowledge of the alleged seditious advocacy of the organization. Accordingly the term membership "per se" as used in section 4(f) must have been intended by Congress to embrace membership with knowledge of such seditious advocacy. A contrary construction would require treatment of the reference to "any other criminal statute" as surplusage and violate the familiar principle that, if possible, effect be given to all of the words of an enactment. *McDonald v. Thompson*, 305 U.S. 263, 266.

This is not to say that Congress intended section 4(f) to repeal the membership clause of the Smith Act. What it did clearly intend, however, was to make that clause unavailable for the prosecution of members of the Communist Party.

A construction of the term "per se" to exclude membership or officership with knowledge of the purpose of the organization is untenable for the further reason that it would negate the immunity which section 4(f) provides against prosecutions under section 4(a). Section 4(a) makes it a crime knowingly to conspire "to perform any act which would substantially contribute to the establishment within the United States of a totalitarian dictator-

ship" under foreign control. The relevance of membership or officership in a Communist organization to this offense results from the Internal Security Act's definition of Communist organizations (sec. 3(5)). These are organizations which operate for the purpose of advancing the objectives of the world Communist movement described in section 2 of the Act (secs. 3(3), 3(4), 3(4A)). Section 2 postulates a world Communist movement whose purpose it is "to establish a Communist totalitarian dictatorship in the countries throughout the world" which "will be subservient to the most powerful existing Communist totalitarian dictatorship" (secs. 2(1), 2(6)).

Thus, Communist organizations, by definition, are dedicated to the objective which section 4(a) forbids. Accordingly, persons who become or remain members or officers of such an organization with knowledge of its objective might, in the absence of section 4(f), be subject to prosecution for conspiring in violation of section 4(a). Obviously, however, membership or officership in an organization without knowledge that it has the purpose denounced by section 4(a) cannot be a crime under that section. Consequently, section 4(f) is meaningful in relation to violations of section 4(a) only if it provides immunity to a member or officer of a Communist organization who has knowledge of the organization's illicit purpose. This requires construing membership per se to include membership with such knowledge.

The structure and legislative history of the Internal Security Act confirm this reading of section 4(f).

The Act provides machinery for the compulsory registration of Communist-action and Communist front organizations, and imposes a duty on their officers to register the organizations. Upon the failure of a Communist-action

organization to register and list the names of all of its members, the individual members are required to register themselves. Onerous criminal penalties are imposed for failure of the organization's officers or members to comply with these requirements. (Secs. 7, 8, 15.) See *Communist Party v. Subversive Activities Control Board*, 351 U.S. 115. The legislative history reveals that the purpose of the immunity provision of section 4(f) was to insure the enforceability of these registration requirements by making the privilege against self-incrimination unavailable to officers and members as a defense against prosecution for failure to register.

The original Senate bill on which the Internal Security Act was based (S. 2311, 81st Cong., 1st Sess.) contained no immunity provision. However, the problem posed by the constitutional privilege against self-incrimination was raised early in the history of the legislation. John W. Davis, Esq., pointed out in a letter to the Senate Committee considering the bill that the provision for compulsory registration by individual members would compel self-incrimination under section 4(a) (Sen. Rep. No. 1365, 81st Cong., 2nd Sess. pp. 43-44).

As a result of the Davis letter and similar representations by others, the Senate Committee which had the bill under consideration added an immunity provision as section 4(f). This section provided that neither the holding of office nor membership in a Communist organization should constitute a violation of sections 4(a) or 4(c) (*id.*, p. 2). The Senate version, however, made no reference to "any other criminal statute."

The minority of the Senate Committee which reported out the bill stated in a minority report that the immunity given by section 4(f) was inadequate to bar an assertion

of the privilege against self-incrimination as a defense to a prosecution for failure to register. The minority pointed out that the problem of self-incrimination inherent in the registration requirement was created not only by sections 4(a) and 4(c), but by the membership clause of the Smith Act. Referring to the wording of section 4(f) in the Senate bill, the minority report stated:

"It is clear that this provision is an inadequate substitute for the constitutional privilege against self-incrimination * * *. And, of course, section 4(f) does not even purport to avoid self-incrimination in relation to the membership clause of the Smith Act." Senate Report No. 2369, Part 2, 81st Cong., 2d Sess., pp. 12-13.

The same criticism of section 4(f) was made in the floor debate by Senators Kefauver, Humphrey and others (96 Cong. Rec. 14479, 15198).

Section 4(f) as reported out by the House Committee likewise limited the grant of immunity to prosecutions under sections 4(a) and 4(c) (96 Cong. Rec. 13752). In the course of the floor debate, Representative Celler read a letter from the Attorney General calling attention to the problem of self-incrimination created by the registration provisions of the bill. He then pointed out that the wording of section 4(f) would not resolve this problem since it did not grant immunity from prosecution under the membership clause of the Smith Act (96 Cong. Rec. 13739). It was only after this warning that the House amended the section by adding the phrase "or of any other criminal statute," which appears in the act as passed (96 Cong. Rec. 13761).

It is clear from the foregoing that Congress believed that the Fifth Amendment privilege compelled it to choose

between the registration provisions of the Internal Security Act and the membership clause of the Smith Act as the means for dealing with Communist Party members whose only overt act is that of membership in the organization. After lengthy deliberation, it chose the former, and therefore amended section 4(f) in a manner which it believed would immunize Communist Party members from prosecution under the membership clause of the Smith Act.

That this was the result that Congress intended and thought it had accomplished by section 4(f) is confirmed by the legislative history of the Communist Control Act of 1954. That Act had its origin in S. 3706, a bill to amend the Internal Security Act by making provisions with respect to so-called "Communist-infiltrated organizations" (100 Cong. Rec. 14208). At the inception of the Senate debate on this bill, an amendment was offered by Senator Humphrey (*ibid.*) which was later adopted by the Senate as an addition to the original bill (*id.*, p. 14234). The Humphrey amendment was prefaced by a Congressional finding reciting in substance that the Communist Party has for its purpose the violent overthrow of the Government (*id.*, p. 14208). The heart of the Humphrey amendment was contained in section 3, which read as follows (*ibid.*):

"Whoever knowingly and wilfully becomes or remains a member of (1) the Communist Party, or (2) any other organization having for one of its purposes or objectives the establishment, control, conduct, seizure or overthrow of the Government of the United States, or the government of any state or political subdivision thereof, by the use of force or violence, *with knowledge of the purpose or objective of such organization*, shall upon conviction be punished as provided by the penalty provisions of Section 15 of the

Subversive Activities Control Act of 1950 (50 U.S.C. 794)." (Emphasis added.)²⁹

Thus, the Humphrey amendment made membership in the Communist Party, when accompanied by knowledge of its alleged illicit purpose, a crime punishable by the penalties provided in section 15 of the Internal Security Act—i.e., by imprisonment of not more than 5 years or a fine of not more than \$10,000. Accordingly, the crime which the Humphrey amendment proposed to create was identical with the crime charged in the indictment.

The Humphrey amendment precipitated a bitter controversy both within Congress and between the Administration and the Congressional proponents of the amendment. The Administration and the Congressional leadership opposed the amendment on the ground that it would destroy the effectiveness of the Internal Security Act. They argued repeatedly and at length that the Humphrey amendment would make membership in the Communist Party *per se* a crime. Thus, House Majority Leader Halleck stated (100 Cong. Rec. 14850):

²⁹ The fact that knowledge of the alleged purpose of the Communist Party was an element of the offense defined in the Humphrey amendment is not only apparent from its text but was confirmed by the author in explaining his proposal in the floor debate: *"The language is quite plain. Of course, it is predicated, as set forth in section 2, upon the findings of fact, which findings of fact already label the Communist Party as a conspiratorial force dedicated to the overthrow of the Government of the United States. Therefore, section 3 provides that whoever knowingly or wilfully becomes and remains a member and has knowledge of the purpose and the objectives of such organization ipso facto automatically becomes subject to the penalties. . . . How one thinks is entirely his own business. But if he maintains membership in an organization, and maintains it knowingly and willingly, and becomes and remains a member of an organization which has as its objective the overthrow of the government of the United States, and does this with knowledge of the purposes of the organization, then he is subject to the penalty."* (100 Cong. Rec. 14232; emphasis supplied.)

"As I read it [the Humphrey amendment], it does undertake to make membership in the Communist Party a felony per se."

Similarly, the Chairman of the House Judiciary Committee said (*id.*, 14643):

"That provision [the Humphrey Amendment], as it passed the Senate, destroyed the very effective Subversive Activities Control Act of 1950, which specifically provided that membership in the Communist organization was not per se a violation of any criminal statute."

Accordingly, it was urged that the Humphrey Amendment would repeal an essential provision of section 4(f) and permit the successful assertion of the privilege against self-incrimination as a defense to a prosecution for failure to register. This position was stated and restated throughout the debate by many members of Congress, including Senator Butler, the author of S. 3706 and Senators Ferguson and McCarran, co-authors of the Internal Security Act. (100 Cong. Rec. 14211, 14222-23, 14566, 14578, 14643, 14652, 14658, 14723, 14850). All of these Senators and Representatives stated that they not only spoke for themselves but were expressing the views of the Attorney General and the Administration. Excerpts from four typical statements are contained in Appendix B, *infra*.

Congress accepted and acted upon the representations and arguments of its leaders and the Attorney General. It revised the Humphrey amendment, and enacted a law which eliminated all criminal sanctions for membership in the Communist Party. (See sections 3 and 4 of the Communist Control Act of 1954; 50 U.S.C. 842, 843.)

It is plain that the debate and the action of Congress on the Humphrey amendment were predicated on the assumption that section 4(f) of the Internal Security Act prohibits the prosecution of Communists under the membership clause of the Smith Act. If Congress had believed prosecution under that clause permissible notwithstanding section 4(f), the controversy around the Humphrey amendment would have been pointless. For the controversy and its resolution were based on the proposition that, by virtue of section 4(f), membership in the Communist Party with knowledge of its alleged illicit purpose was not a crime and that it should not be made a crime.

The opinion below (R. 447-48), citing *Scales v. United States*, 227 F. 2d 581 and *United States v. Lightfoot*, 228 F. 2d 861, held that the crime charged is not within the provision of section 4(f) because membership per se does not include membership with knowledge of the organization's forbidden purpose. None of these decisions attempts to reconcile this construction with (a) the reference in section 4(f) to "any other criminal statute," (b) the immunity which the section purports to confer against prosecution under section 4(a), or (c) the legislative history which we have reviewed.

The court below (*ibid.*) also relied on the savings clause of the Internal Security Act (50 U.S.C. 796) to support its conclusion. The clause provides that the Act "shall be construed as being in addition to and not in modification of existing criminal statutes." These words, however, do not nullify the reference in section 4(f) to "any other criminal statute." It is a familiar principle of statutory construction that specific provisions prevail over general language used in the same statute. *Ginsberg & Sons v. Popkin*, 285 U.S. 204, 207. Accordingly, a general saving clause cannot

override express provisions found in the body of the enactment. *United States v. Yuginovich*, 256 U.S. 450, 463.

In its Brief on Reargument in *Scales*, the Government contends (p. 35) that Congress in section 4(f) simply "re-cified that the bare fact leading to registration, i.e. membership, is not per se a crime." But this was already perfectly apparent from the texts of the membership clause and section 4(a). Thus, the contention assumes that the only Congressional purpose in enacting section 4(f) was to re-iterate the obvious. The assumption violates an elementary principle of statutory construction. It also flies in the face of the legislative history which demonstrates that section 4(f) was not intended as a redundancy but to afford members and officers of Communist organizations an immunity from prosecution which was not otherwise available to them and which was deemed necessary to the validity of the provisions requiring them to register.

The Government also suggests (*ibid.*) that section 4(f) may not have accomplished the ultimate legislative purpose because the immunity conferred is not broad enough to foreclose a claim of privilege against compulsory registration. That may well be.³⁰ But the fact that section 4(f) proves legally insufficient to accomplish the result that Congress expected of it does not militate against giving effect to the limited immunity that the section affords. *United States v. Bryan*, 339 U.S. 323, 335-37.

³⁰ The question is presented in the petition for certiorari in *Communist Party v. Subversive Activities Control Board*, No. 537, this Term.

IV

The Membership Clause of the Smith Act Is Unconstitutional on Its Face and as Applied.

The text of the membership clause states an offense consisting solely of holding membership in an organization with knowledge that it advocates forcible overthrow. As written, the clause does not require proof of criminal intent or of any overt act on the part of the accused other than the act of becoming or remaining a member. It authorizes the conviction of one who is opposed to violent revolution and who joined the organization for some entirely legitimate purpose. Likewise, a conviction is authorized notwithstanding that the accused is a passive member or confines his activities to lawful and peaceable advocacy and conduct.

In an attempt to obviate the glaring infirmities which appear on the face of the statute, the Government proposes to embellish it with two further ingredients. First, it would add a specific intent as an element of the offense and has alleged in the indictment (R. 1) that petitioner intended "to bring about such overthrow by force and violence as speedily as circumstances would permit". Second, in briefs and argument in this Court, the Government has proposed to limit the reach of the statute to "active" members whom it defines as those who devote "all, or a substantial part of [their] time and efforts to the [organization]" (G. Br. Rearg.,³¹ pp. 22-24).

The membership clause, both as written and with these embellishments, differs in vital respects from the "advo-

³¹ We so designate the brief for the United States on reargument in *Scales*, No. 8, this Term. "1958 Br." designates the Government's original brief in *Scales* No. 488, Oct. Term, 1958.

cacy" and "organizing" provisions of the Smith Act which were sustained in *Dennis v. United States*, *supra*. The latter prohibit advocacy of forcible overthrow and the organization of a group which engages in such advocacy. They punish individuals for their own advocacy or for organizing to engage in advocacy. Accordingly, the question considered in *Dennis* was whether the advocacy of forcible overthrow might constitutionally be punished.³²

The membership clause, on the other hand, does not punish advocacy but membership. As written, or with the interpolations supplied by the Government, the clause penalizes an individual, not for his advocacy, but because of the advocacy of other members of the group to which he belongs. Thus, it is not advocacy but association that the clause makes criminal.

Association with a group engaged in advocacy is within the protection of the First Amendment. *N.A.A.C.P. v. Alabama*, 357 U.S. 449, 460, citing *Dé Jonge v. Oregon*, 299 U.S. 353, 364 and *Thomas v. Collins*, 323 U.S. 516, 530. Group association, of course is also a "liberty" protected by due process. *De Jonge v. Oregon*, *supra*, at 364. Accordingly, the constitutional issues which this case presents are (a) whether the First Amendment or due process permits the proscription of association of the kind which the statute punishes and, if so, (b) whether the statute was constitutionally applied to petitioner.

³² The *Dennis* defendants were indicted for conspiring to violate the "advocacy" and "organizing" provisions of the Act. The trial court construed the indictment as charging a conspiracy which had advocacy as its sole object, the conspiracy to organize being a "mere preliminary" to the conspiracy to advocate. *United States v. Dennis*, 9 F.R.D. 367, 376. Furthermore, this Court treated the conspiracy as an agreement to advocate forcible overthrow in the present, not in the future. See *Yates v. United States*, *supra*, at 324.

Resolution of these constitutional issues depends upon the answers to the questions stated in the Court's order of June 29, 1959, 360 U.S. 924, setting *Scales* for reargument.³³ In what follows, we address ourselves to these questions, although not in the sequence which the order enumerates. We will first show that, on its face and as applied, the statute, as embellished by the Government, contravenes the clear and present danger doctrine (paragraphs 2 (first question), 3 (first question) and 4 of the Court's order). We next show that the statute, as embellished, also imputes guilt solely from association (paragraphs 2 (first question) and 3 (first question) of the Court's order). We then show that the statute, as written, is unconstitutional for additional reasons (paragraph 1 of the Court's order). Finally, we show that the interpretations urged by the Government are impermissible (paragraphs 2 (second question) and 3 (second and third questions) of the Court's order).

A. THE STATUTE AS INTERPRETED BY THE GOVERNMENT CONTRAvenes THE CLEAR AND PRESENT DANGER DOCTRINE

1. *The applicability of the doctrine*

Answers to questions posed in the first sentence of paragraph (4) of the Court's order lie at the threshold of the inquiry into the validity of the membership clause under the First Amendment: "Whether the 'clear and present danger doctrine' . . . has application to the Membership Clause, either with respect to the accused or with respect to the 'society, group or assembly of persons' described in the statute."³⁴

³³ The text of the order is set forth in Appendix C, *infra*.

³⁴ Our concern at this point is with the applicability of the doctrine and not with the nature of the considerations which it embodies. As we later show, the statute contravenes the doctrine both as originally enunciated and as re-interpreted in *Dennis*.

(a) The phrase "clear and present danger" is a shorthand description of the guiding considerations for determining whether the restraint of an activity within the area protected by the First Amendment is constitutional. So far as we are aware, all of the cases in which a majority of the Court have explicitly applied the doctrine involve restraints on speech or the press. But the doctrine is equally applicable to restraints on the right of assembly or association.³⁵ This is so because the specific command of the Amendment embraces all of the rights which it protects and because these rights are inseparable, occupying the same high place on the scale of values of a democratic society. *Thomas v. Collins, supra*, at 530.

Accordingly, Mr. Justice Brandeis held that "assembling with a political party" is a right protected by the First Amendment which may not be invaded where it appears that the invasion cannot find justification in clear and present danger. *Whitney v. California, supra*, at 378-9 (concurring opinion). Since the membership clause punishes "assembling with a political party," it follows that the clear and present danger doctrine must be applied in determining the constitutionality of the statute on its face and as applied to petitioner.

The Government argues (G. Br. Rearg., p. 30) that if the specific intent charged in the indictment can be imported into the membership clause, the clear and present danger doctrine becomes inapplicable. The same argument was advanced in *Dennis* (brief for the United States, pp. 270-88). Although not discussed in any of the opinions, it is obvious that the argument was rejected. For the prevailing opinion applied the clear and present danger doc-

³⁵ The Court has used the two terms interchangeably. See, e.g., *N.A.A.C.P. v. Alabama, supra*, at 460. Because "association" more accurately describes the membership relation, we use it in referring to the right which the membership clause restrains.

trine (at 502-11) notwithstanding its holding (at 499-500) that the defendants had the same specific intent which the indictment in the present case charges to petitioner.

The fallacy of the Government's argument is likewise demonstrated by *Schenck v. United States*, 249 U.S. 47, which it cites as supporting its position (G. Br. Rearg., p. 18). For Justice Holmes found (at 51) that Schenck circulated his document with the intent of obstructing the draft. If the Government is right, that finding would have disposed of the case and it would have been unnecessary to "add a few words" (at 52), enunciating the clear and present danger doctrine and stating unequivocally that it is applicable "in every case" involving speech.³⁶

The Government relies on a remark in the dissent in *Abrams v. United States*, 250 U.S. 616, 627-28, that speech may be punished if it "produces or is intended to produce a clear and imminent danger" and on a similar remark in the concurring opinion in *Whitney v. California*, *supra*, at 373 (G. Br. Rearg., pp. 18-19). At most, these remarks mean that an intent to produce an imminent danger dispenses with the necessity of proof that the danger, in fact, was immediate.³⁷ However, the intent to which Justices

³⁶ The sentence in *Schenck* which the Government quotes (G. Br. Rearg., p. 18) confirms this reading of the opinion. For it speaks of "tendency" and "intent" in the conjunctive. In context, "tendency" plainly refers to clear and present danger. The point of the sentence is that where both elements are present, proof that the words used actually resulted in the evil apprehended is unnecessary. Similarly, in *Pierce v. United States*, 252 U.S. 239, 255 (dissenting opinion), Mr. Justice Brandeis stated that both the existence of a clear and present danger and an intent to produce the forbidden result are necessary to support a conviction in a speech case.

³⁷ The Government seems to recognize this at one point in its argument. After stating that specific intent makes the clear and present danger doctrine wholly inapplicable, it goes on to say that intent only "dispenses with the occasion for the additional qualification that the danger be immediate" (G. Br. Rearg., p. 30, emphasis supplied).

Holmes and Brandeis referred is not the intent which the Government reads into the statute and has charged in the indictment. Petitioner and the Communist Party are not alleged to have intended to bring about forcible overthrow immediately, but only "as speedily as circumstances would permit" (R. 1). Hence, if the statements in *Abrams* and *Whitney* can be construed to qualify the clear and present danger doctrine,³⁸ the qualification has no application to the membership clause, even^o if it imports the kind of specific intent which the Government seeks to interpolate.³⁹

(b) We have demonstrated that the clear and present danger doctrine is applicable to the membership clause. It remains to identify the act or acts described in the clause which must be looked to for the source of the danger, if any.

The words "clear and present" have been variously interpreted. Cf. *Whitney v. California*, *supra*, at 375-79 (concurring opinion) with *Dennis v. United States*, *supra*, at 508-11. But whatever the nature of the considerations embodied in the doctrine may be thought to be, it is clear that they focus upon the consequences of the particular act which is the object of the restraint in question. This must be so because, under the doctrine, the validity of the restraint is determined by the nature of the danger, if any, which will result from performance of the act sought to be restrained.

³⁸ The defendant in *Schenck* certainly intended to obstruct the draft immediately. And see *Pennekamp v. Florida*, 328 U.S. 331 and *Craig v. Harney*, 331 U.S. 367 which reversed contempt convictions because the newspaper articles in question did not meet the clear and present danger test although they were published with the intent of influencing court action in pending cases.

³⁹ It was doubtless because the same kind of intent was involved in *Dennis* that the Court found it unnecessary to discuss the Government's contention when advanced in that case.

Accordingly, where speech is punishable, "The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent." *Schenck v. United States, supra*, at 52. Similarly, in the case of the membership clause which punishes association, the question must be whether the association occurs in such circumstances and is of such a nature as to create a clear and present danger of substantive evils within the competence of Congress.

The substantive evils which the Smith Act seeks to prevent are attempts to overthrow the Government by force and violence. *Dennis v. United States, supra*, at 509. The Act does not attack the evil directly (cf. 18 U.S.C. 2384) but by making it criminal to advocate, organize to advocate, distribute literature advocating, or to be a member of a group which advocates forcible overthrow,⁴⁰ or to conspire to commit any of these acts. *Dennis* held that advocating or organizing to advocate the proscribed doctrine may, under some circumstances, create a clear and present danger of attempted forcible overthrow. That holding validates the "advocacy" and "organizing" provisions of the Act. It does not follow, however, that all of the other proscriptions of the Act are likewise constitutional merely because the statute links them in some fashion to the forbidden advocacy. The validity of each must be judged independently by determining whether the conduct which it punishes is of such a nature that it can, under any circumstances, create a clear and present danger of the evil which Congress sought to prevent.

⁴⁰ For the purpose of the present analysis the factors of knowledge, intent and "activity" may be disregarded since they have no relevance in identifying the act or acts which must be looked to for the source of the danger, if any.

The *Dennis* case itself demonstrates this proposition. The indictment charged a conspiracy to violate the "advocacy" and "organizing" provisions of the Act. The Court found that the substantive offenses were constitutional because, under given circumstances, the punishable conduct can create a clear and present danger. The question before the Court, however, was the constitutionality of a statute punishing a conspiracy to commit these substantive offenses. The Court did not resolve this question on the ground that because the substantive offenses were sufficiently dangerous and the conspiracy immediately anterior to their commission, the conspiracy could constitutionally be punished. Instead, the Court examined the conspiracy itself in order to determine whether it gave rise to a clear and present danger. The conspiracy provisions of the Act were upheld (at 511) only because, "It is the existence of the conspirac, which creates the danger."

The decision in *Yates* gives further confirmation to our contention. There, the Court (at 324) noted that the conspiracy charged, like the conspiracy in *Dennis*, was "a conspiracy to advocate presently the taking of forcible action in the future." The Court added (*ibid.*), "We intimate no views as to whether a conspiracy to engage in advocacy in the future, where speech would thus be separated from action by one further remove, is punishable under the Smith Act." There would have been no occasion for this reservation if all clear and present danger questions that arise on the face of the Act had been resolved by the determination that advocacy of forcible overthrow, under certain circumstances, can meet the test. The reservation was necessary because the constitutionality of proscribing the exercise of a First Amendment right "separated from action by one further remove" required an adjudication as to whether the exercise of that right can *itself* create a clear and present danger.

Membership in an organization that advocates forcible overthrow is at least one remove from the advocacy. Hence, it is the membership and not the advocacy which must be looked to for the source of the danger in a prosecution under the membership clause.

Although *De Jonge v. Oregon*, 299 U.S. 353, was not decided in terms of the clear and present danger doctrine, the principle which it establishes is decisive of the question under discussion. *De Jonge* was convicted of the offense of assisting in the conduct of a meeting of an organization that engages in seditious advocacy. The evidence showed that he had spoken at a peaceable meeting of the Communist Party, an organization which the state court found to be engaged in advocating illegal action. The Court (at 365) accepted this finding and recognized (at 363) that it might justify punishing the organization for such advocacy. Nevertheless, the Court invalidated the statute as applied by the state court because it authorized a conviction for assisting in the conduct of a lawful and peaceable meeting, although held under the auspices of the seditious advocate. The Court said (at 364-65):

"These [First Amendment] rights may be abused by using speech or press or assembly in order to incite to violence and crime. The people through their legislatures may protect themselves against that abuse. But the legislative intervention can find constitutional justification only by dealing with the abuse. The rights themselves must not be curtailed."

Herndon v. Lowry, 301 U.S. 242, 258-59, summarizes the holding in *De Jonge* as follows:

"The power of a state to abridge freedom of speech and of assembly is the exception rather than the rule and the penalizing even of utterances of a defined

character must find its justification in a reasonable apprehension of danger to organized government. . . . If, therefore, a state statute penalizes innocent participation in a meeting held with an innocent purpose merely because the meeting was held under the auspices of an organization membership in which or the advocacy of whose principles, is also denounced as criminal, the law, so construed and applied, goes beyond the power to restrict abuses of freedom of speech and arbitrarily denies that freedom."

Thus, the constitutional question which the statute in *De Jonge* presented was not whether the advocacy of the Communist Party created a danger to the Government. This question was irrelevant under a statutory provision which did not penalize advocacy. The only relevant question was whether the act which the statute punished—association with the Communist Party in the conduct of its meetings—was itself dangerous. So, under the membership clause, the issue is not whether the advocacy of the organization can give rise to a clear and present danger of forcible overthrow. The issue is whether individual membership in the organization is of itself creative of such danger.

The Government contends (G. Br. Rearg., pp. 31-32) that the clear and present danger doctrine cannot be applied "with regard to the danger to be anticipated . . . from the membership of this particular petitioner." The only reason it assigns for this conclusion (p. 32) is that, "It would be the same as writing the Act off the books to require that the government prove that it is in danger of overthrow from the activity of any individual." This begs the question. If the clear and present danger doctrine, as properly applied, cannot ever justify a conviction for violation of the

membership clause, the clause must be written off the books because it is unconstitutional on its face.

The Government says (*ibid.*) that "the 'danger' test is to be applied to the organization."⁴¹ But an organization, as such, cannot be "dangerous". Danger can arise only from some unlawful activity in which the organization is engaged. It is the activity, not the organization, which is the source of the danger. The only organizational activity to which the membership clause refers is the advocacy of forcible overthrow. Hence, the Government's argument comes down to the proposition that it is this advocacy which must be looked to for the source of the danger. As we have demonstrated, however, that proposition is fallacious.⁴²

The Government further argues (p. 32) that, "This petitioner's membership is his contribution to the common end, and it is his membership, plus that of his associates, that gives the Party power." This seems to say that an organization with only a few members is powerless to create a danger, but that the aggregate "contributions" of a suffi-

⁴¹ The Government asserts: "This has been the uniform practice in this type of case. *Gillow v. New York*, 268 U.S. 652; *Whitney v. California*, 274 U.S. 357; cf. *American Communications Association v. Douds*, 339 U.S. 382." Of course, none of these were "membership" cases. And the only opinion in any of them which applied the clear and present danger doctrine was the dissent in *Gillow* which held the doctrine applicable, in an "advocacy" case, to the advocacy with which the accused was charged, without reference to the organization of which he was a member.

⁴² By the reference (G. Br. Rearg., p. 32) to its 1958 Brief, pp. 39-45, the Government seems to assert that the source of the danger is not the advocacy of the organization but its alleged commission or readiness to commit espionage, sabotage and crimes involving "a direct and violent assault on our security and institutions." The danger from conduct of the sort so luridly described would, of course, justify statutes punishing espionage, sabotage, conspiracies to overthrow the Government and the like. But it cannot justify the membership clause which punishes an accused without regard to organizational conduct of the sort described or the accused's knowledge of such conduct.

ciently large membership "gives the Party power." By "power" the Government can only mean power to implement the organization's advocacy of violent overthrow, thus making the advocacy dangerous. Again, therefore, the argument comes back to the erroneous assertion that it is the existence of a clear and present danger from the advocacy of the organization and not from membership in it which is relevant under the membership clause.

Furthermore, the Government does not and cannot demonstrate that the danger from the illegal advocacy of an organization rises in proportion to the size of its membership: The Government recognizes (*ibid.*) that a nominal member makes no "contribution" at all to the danger. Accordingly, "contributions" are made only by "active" members. By definition (G. Br. Rearg., p. 23), a member is "active" who engages in nothing but lawful and constitutionally protected activity on behalf of the organization. On the Government's theory, therefore, organizational advocacy of forcible overthrow, not dangerous of itself, creates a clear and present danger when the organization has a sufficiently large, but unspecified, number of members who confine themselves to innocent activity. This is absurd.

The theory of the Government contravenes the decision in *De Jonge*. De Jonge made a "contribution" to the Communist Party by assisting in the conduct of its meeting and lending it the prestige of his presence on the platform. All other persons who assisted in conducting Party meetings made similar "contributions." But the Court did not test the validity of the statute by measuring the aggregate effect of "contributions" made to the unlawful objective of the organization by persons who assisted in the conduct of its meetings. The Court asked only whether performance by the accused himself of the act which the statute punished was an abuse of his First Amendment rights—

i.e., whether it endangered the Government. The same inquiry is determinative of the constitutionality of the membership clause.

2. *The statute on its face*

It is too plain for argument that if, as we have shown, the clear and present danger doctrine is applicable to the membership of the accused, the membership clause is unconstitutional on its face. This is true whether or not specific intent and "activity" can be read into the statute. For, as the Government concedes (G. Br. Rearg., p. 32), there can never be "danger of overthrow from the activity of any individual."

The membership clause with the proposed embellishments is likewise invalid, if it be assumed that the relevant "danger" is not individual membership but organizational advocacy of forcible overthrow. This result is required by the decision in *De Jonge* which assumes that the advocacy of forcible overthrow may be proscribed but holds that this does not justify a statute which punishes a person for active association with an organization engaged in such advocacy when he has not personally participated in it. That case is simply an application of the general principle that statutes affecting the rights of speech, press and assembly must be narrowly drawn so as not to invade these rights except to the extent necessary to curb their abuse. *Stromberg v. California*, 283 U.S. 359; *Winters v. New York*, 333 U.S. 507; *Herndon v. Lowry*, *supra*. In line with this principle, too, "the availability of more moderate controls than those which the state has imposed" is one of the considerations embodied in the clear and present danger doctrine. Freund, *On Understanding the Supreme Court*, quoted in *Dennis v. United States*, *supra*, at 542-43 (concurring opinion).

The "danger" from organizational advocacy of forcible overthrow can be prevented by statutory provisions narrowly drawn to prohibit such advocacy. In fact, the Government is fully protected against danger from that source by the "advocacy" and "organizing" provisions of the Smith Act and the general conspiracy statute.⁴³ Hence, the membership clause is an unnecessary and, therefore, an unconstitutional invasion of the member's right of association.

3. *The statute as applied*

Dennis held, on the facts of that case, that a conspiracy to advocate forcible overthrow "as speedily as circumstances would permit" satisfied the clear and present danger doctrine as re-interpreted in the prevailing opinion. The holding (at 511) was based (1) on the finding that the conspiracy was "highly organized . . . with rigidly disciplined members subject to call when the leaders, these petitioners, felt that the time had come for action, coupled with" (2) "the inflammable nature of world conditions."

The evidence in the present record and the state of our foreign relations at the time the indictment was returned establish that petitioner's conviction contravened the clear and present danger doctrine as formulated in *Dennis*. This is so whether the doctrine is applied with respect to the conduct of petitioner or the advocacy of the Communist Party.

The only evidence of petitioner's activities within the period not barred by the statute of limitations was the following: (1) In September, 1951, he solicited a ten dollar contribution to the Party from Chatley and discussed the endorsement of American Labor Party candidates with that

⁴³ The Government has tried the Smith Act conspiracy cases on the theory that the Communist Party was the conspiratorial group. See, e.g., *Yates v. United States*, *supra*, at 329.

witness (R. 302-03). (2) In September, 1951, he told Regan that "he was going under a disguise to conceal himself" (R. 368). (3) A month later, he picked up some Party publications which his wife had left for him at the Regan home and told Regan that "he had to be on the move" (R. 369). (4) In 1953-55, he lived in New Jersey where he was employed by the Goodyear Rubber Company under an assumed name (*supra*, p. 8). Obviously, none of these activities is remotely dangerous.

The only evidence concerning the advocacy of the Party within the statutory period was that the Party Chairman had advocated the achievement of socialism by peaceable and constitutional means (*supra*, p. 8). There was no evidence whatsoever of activity by other Party members or of the size of the membership during the statutory period. Hence, there is no basis in the record for any estimate as to the aggregate "contribution" of all Party members to the forbidden objective.

Moreover, *Dennis* did not hold that the conspiracy proved in that case would give rise to a clear and present danger under all circumstances. It held (at 511) only that the conspiracy created such a danger in the context of the then "touch and go nature of our relations" with the Soviet Union. Judge Hand stated the issue as follows (183 F. 2d 201, 213):

"We need not say that even so thoroughly planned and so extensive a confederation would be a 'present danger' at all times and in all circumstances; the question is how imminent: that is how probable of execution—it was in the summer of 1948, when the indictment was found."

After posing this question, the court found that in the summer of 1948 (*ibid.*):

"Any border fray, any diplomatic incident, any difference in the construction of the *modus vivendi*—such as the Berlin blockade we have just mentioned—might prove a tinder box, and lead to war."

The international setting in November, 1954, the date of the indictment in this case, was materially different from that of 1948-1951 on the basis of which the *Dennis* conviction was affirmed.

The Korean truce took effect in July 1953. By 1954, a marked relaxation of international tensions had occurred, leading to the Geneva conference in the spring of that year and the establishment of peace in Indo-China. In October, 1954, the President stated (*N.Y. Times*, October 21, 1954):

"For the first time in twenty years, there has been for some months no active battlefield anywhere in the world. Moreover, while fighting has been brought to a halt during the past twenty-one months, still other developments favorable to the maintenance of peace have been brought about through understanding and through persistent and patient work, in which your government has been a helpful participant."

In his State of the Union Message on January 5, 1955, the President was able to report (*N.Y. Times*, Jan. 6, 1955):

"There has been progress justifying hope for continuing peace and for the ultimate rule of freedom and justice."

The progress to which the President referred made possible the July, 1955 "summit" conference at Geneva, accompanied by the further relaxation of tensions and recession of the danger of war. Thus, the background factors which the Court held essential to the constitutionality of the convic-

tions in *Dennis* were no longer in existence at the time the indictment here was returned. Cf. *Chastleton Corporation v. Sinclair*, 264 U.S. 543.

The prevailing opinion in *Dennis* (at 510) weighed "the gravity of the 'evil' discounted by its improbability" against the values inherent in the guarantees of the First Amendment. It held that the threat to the nation from the conspiracy of the defendants at a time when war seemed imminent tipped the balance in favor of security as against individual liberty.

The present case requires a different weighting. On the one hand, the danger of the effectuation of the "evil" from the activities of the petitioner or the Communist Party, as disclosed by the evidence, is altogether improbable under any circumstances, let alone in the setting of the new and improved international situation that has prevailed since 1954. On the other hand, greater weight must be given to the preservation of our democratic freedoms, now that the conflict between the capitalist and socialist worlds has moved to a new plane where, as the leaders on both sides recognize, the issue will be decided, not by arms, but by superiority of social, political and economic institutions and practices.⁴ Indeed, the First Amendment has become one of our most potent weapons in what the Chief Justice has called "a contest for the hearts and minds of men."

Accordingly, even under the reformulation of the clear and present danger doctrine which *Dennis* enunciated, the balance which must be struck in this case requires an ac-

⁴ Secretary of State Herter recently stated in a major policy address: "As we move forward in what may become a new era of competitive peace, our chief source of strength will not lie in material things—but in our faith in freedom." *New York Times*, November 17, 1959.

⁵ Address to the American Bar Association, 40 A.B.A. Jour. 955

quittal. However, should the Court think otherwise, we urge it to reconsider the holding in *Dennis*.

As all four opinions in that case recognized, the interpretation given the clear and present danger doctrine by the prevailing opinion bears little resemblance to the conception of Justices Holmes and Brandeis which the Court adopted in subsequent cases. See, e.g., *Thomas v. Collins, supra*; *Bridges v. California*, 314 U.S. 252. The Court has had no occasion to consider or apply the reformulation of the doctrine since *Dennis*. The prevailing opinion attracted the adherence of but four Justices. Only three members of the present Court participated in the case, all of whom rejected the interpretation given the doctrine by the then Chief Justice. Finally, the decision bears the imprint of the crisis of its time when the war in Korea was thought by many to be the first engagement in an inevitable World War III.

These considerations point up the need for a re-examination of *Dennis* should the Court, in this case, reach the question of the meaning of "clear and present danger."

B. THE STATUTE AS INTERPRETED BY THE GOVERNMENT IMPUTES GUILT SOLELY FROM ASSOCIATION

The imputation of guilt solely from association violates the First Amendment by punishing the exercise of a right which the Amendment protects. It also violates due process by unreasonably depriving in accused of the "liberty" of association. *N.A.A.C.P. v. Alabama, supra*.

Conspiracy law punishes association in furtherance of a criminal enterprise. But, "[g]uilt with us remains individual and personal, even as respects conspiracies." *Kottekas v. United States*, 328 U.S. 750, 772. This is true because a conspirator is punished, not for association with his co-conspirators, but for his personal participation in

an agreement to commit a crime, when followed by an act of the conspirators in furtherance of the agreement. In contrast, as we will show, the membership clause proscribes association with—i.e., membership in—a group which advocates forcible overthrow even though the accused has not agreed to such advocacy or performed any act in furtherance of it. Accordingly, the statute penalizes association with the group for any purposes, including those that are innocent. It is because of this fact, as a number of distinguished commentators have noted, that the membership clause introduced the “abhorrent” doctrine of guilt by association into the federal criminal law.⁴⁶

It is clear that the membership clause as written imputes guilt solely from association. For it authorizes a convic-

“This idea that guilt is not necessarily personal, but can result from association, is absolutely abhorrent to every American tradition or conception of criminal justice before 1918. Unfortunately, in that hysterical period it got into our deportation statutes and state syndicalism acts; but the operation of both kinds of laws is not a cause for pride, and might well have deterred Congress from passing this part of section 2 [the membership clause]. It is the first time that guilt by association was ever introduced into a federal criminal law. Neither the Sedition Act of 1798 nor the Espionage Acts of 1917 and 1918 included such a conception. We got safely through the Civil War and the World War without finding it necessary to create group guilt outside the limits of an actual conspiracy.” Chaffee, *Free Speech in the United States* (1954), p. 470. For a detailed critique of the membership clause, see the same volume at 470-84. “Whatever its [the Smith Act’s] merits otherwise, Congress had now for the first time made ‘membership’ or ‘affiliation with’ certain organizations a criminal offense. Abhorrent, for generations and imported from the Immigration Act of 1918, ‘guilt by association’ became part of the law applicable to citizens.” O’Brien, *New Encroachments on Freedom*, 66 Har. L. Rev. 1, 18. Guilt by association “appeared in our law only in 1940; since then it has grown and spread until this cloud, no larger than a man’s hand, covers the whole horizon.” Commager, *The Pragmatic Necessity for Freedom, in Civil Liberties Under Attack* (1951), p. 17. See also, Acheson, *A Democrat Looks at His Party* (1955); pp. 172-73; Biddle, *The Fear of Freedom* (1951), pp. 92, 105-06.

tion merely on proof of membership and knowledge of the proscribed advocacy, notwithstanding that the accused does not believe in such advocacy, does not intend by his membership to bring about violent overthrow, and is a passive member or one who confines his activity in the group to furtherance of its peaceable advocacy. Cf. *Herndon v. Lowry*, *supra*, at 259; *Stromberg v. California*, *supra*; *Adler v. Board of Education*, 342 U.S. 485.⁴⁷

The additional ingredients which the Government proposes to supply do not cure the defect apparent from the face of the statute.

The specific intent which the Government reads into the membership clause cannot substitute for participation in the illegal agreement required in conspiracy cases. For that intent is not an intent to further the forbidden *advocacy* of the group. It is an intent to bring about the substantive evil—forceful overthrow. Moreover, the intent proposed is not even an intent to bring about the substantive evil through or with the aid of the organization of which the accused is a member. It is merely a generalized intent to bring about forceful overthrow by some unstated means.⁴⁸ Thus, an accused may be convicted although he believes that the advocacy of forceful overthrow is premature and that the group should confine itself to peaceable advocacy and activity in order to attract adherents until the moment is ripe to make the attempt. Cf. *United States v. Silverman*, *supra*, at 686; *Yates v. United States*, *supra*.

⁴⁷ We discuss these cases *infra*, pp. 75-76, in demonstrating the fallacy of the Government's contention (G. Br. Rearg., pp. 5-12) that the membership clause is constitutional without a specific intent requirement.

⁴⁸ This is clear not only from the indictment (R. 1) but from the instructions (R. 423) which enumerated (1) membership with knowledge and (2) intent to bring about overthrow as two distinct and disparate elements of the offense.

at 324, 330. Likewise, a conviction may be had where the accused does not regard the group as a feasible instrumentality for forcible overthrow and intends to accomplish his objective by some other means. Obviously, participation in an agreement to advocate forcible overthrow cannot be imputed to an accused from his membership in the group, when accompanied by intent of the kind just described. To permit a conviction for such an intent, not accompanied by any act in furtherance of it, would be to introduce archaic concepts of constructive treason into the federal criminal law.⁴⁰

Even if the intent which the Government interpolates could somehow be twisted into an intent to further the illegal advocacy of the group, it would still not validate the statute as one which, in effect, punishes conspiracies. For this intent, plus membership with knowledge of the group's illegal advocacy, could not constitutionally give rise to a conclusive presumption that the accused thereby became a party to an agreement to engage in such advocacy. The question would still be one for the jury, just as participation by an accused in the conspiratorial agreement is a jury question in every conspiracy case, no matter how compelling the evidence may be. Since the membership clause, as construed by the Government, substitutes a conclusive presumption for jury determination of this question, the statute violates due process. Cf. *Tot v. United States*, 319 U.S. 463.

The Government's "activity" factor is of no help in reconciling the statute with the constitutional principle that guilt is personal and bringing it within the ambit of conspiracy

⁴⁰ "The jury . . . must have supposed it to be within their province to condemn men not merely for disloyal acts but for a disloyal heart; provided only that the disloyal heart was evidenced by some utterance. To prosecute men for such publications reminds of the days when men were hanged for constructive treason." *Schechter v. United States*, 251 U.S. 466, 493 (dissenting opinion).

law. By definition (G. Br. Rearg., p. 23), a member is "active" who confines himself to innocent and constitutionally protected activity and advocacy. Moreover, the definition does not require "activity" to be in furtherance of the group's illegal advocacy or illegal objective. It is enough (G. Br. Rearg., p. 24) that an accused has "devoted all, or a substantial part, of his time and efforts to the Party." Thus, the "activity" factor is satisfied by lawful conduct in furtherance of a lawful objective of the group.

The Government assumes (G. Br. Rearg. p. 23) that "active support of any kind aids the organization in achieving its own illegal purposes." This assumption is unwarranted in fact³⁰ and is contrary to the decision in *De Jonge*. At most, the purpose and effect of the member's activity presents a jury question, just as it is for the jury to determine, in conspiracy cases, whether the alleged overt acts were in furtherance of the object of the conspiracy.³¹ But the "activity" factor removes this question from the consideration of the jury. Accordingly, in addition to its other infirmities, the factor has the vice of depriving an accused of jury trial of a fact essential to guilt.

It is clear from the foregoing analysis that the proposed embellishments of the membership clause, do not give it any resemblance to a conspiracy statute. In fact, the Government's defense of the clause as a conspiracy law does

³⁰ Cf. *Bridge v. Wilson*, 326 U.S. 135, 147: "It (Marine Workers Industrial Union) was found to have, and we assume it did have, the illegitimate objective of overthrowing the government by force. But it also had the objective of improving the lot of its members in the normal trade union sense. One who cooperated with it in promoting its legitimate objectives certainly could not by that fact alone be said to sponsor or approve of its general or unlawful objectives."

³¹ The Government is oblivious of this fact when it attempts to analyze its "activity" factor to overt acts in conspiracy cases (G. Br. Rearg., p. 23, fn. 10).

not rest on these embellishments, but on an inference it draws from the supposed peculiar characteristics of membership in a particular organization—the Communist Party (1958 Br., pp. 49-50). Membership in that organization, it is asserted, “entails . . . tightly disciplined, quasi-military, deeply conspiratorial activities” and therefore “partakes of the concert-of-action, combination, and acting-together which characterize conspiracy” (*id.*, p. 53).³² The statute, however, authorizes a conviction without proof that the membership of the accused entailed “conspiratorial activities” and without a jury finding that he was in fact a party to a “combination” in furtherance of the forbidden objective. Thus, on the Government’s own showing, a conviction may be had for a crime neither charged nor proved. This is a blatant denial of due process. *De Jonge v. Oregon*, *supra*, at 362; *Cole v. Arkansas*, 333 U.S. 196; *Herndon v. Lowry*, *supra*.

The argument of the Government that a Communist Party member is *ipso facto* a conspirator relies largely on Justice Jackson’s partial concurrence in *A.C.A. v. Douds*, *supra* (1958 Br., pp. 43, 49, 53).³³ But the Government ignores the passages in the opinion which demonstrate that, notwithstanding his views as to the nature of the Party, the author believed that membership in it could not con-

³² Of course, if the membership clause were nothing but a conspiracy statute, it would be superfluous since conspiracies to advocate forcible overthrow are punishable either under the general conspiracy statute or under the Smith Act itself, 18 U.S.C. 2385, as amended July 24, 1956.

³³ *Schwartz v. Board of Bar Examiners*, 353 U.S. 232, 244, states that the view of the nature and purposes of the Communist Party expressed by Justice Jackson “did not purport to be a factual finding in that case and obviously it cannot be used as a substitute for evidence in this case to show that petitioner participated in any illegal activity or did anything morally reprehensible as a member of that Party.”

stitutionally be proscribed. Thus, Justice Jackson upheld section 9(h) of the Taft Hartley Law (at 434) only because it did not prohibit an individual from being "a full fledged member of the Communist Party" or prevent members "from engaging in any above-board political activity normal in party struggles under our political system."⁵⁴ Since the membership clause has all of these vices, the opinion in *Doubs* plainly foreshadows its invalidity.

It is apparent that the Government has a dual objective in this case. It seeks to sustain the constitutionality of the membership clause by analogizing it to a conspiracy statute. In doing so, it also seeks to avoid the burden of proof which embarrasses it in Smith Act conspiracy cases and to dispense with the necessity for instructions which even the "looseness and pliability" of conspiracy law⁵⁵ require for the protection of the accused (*supra*, p. 40). The Constitution makes these objectives irreconcilable. The Government's effort to reconcile them simply confirms our demonstration that the membership clause cannot be validated on conspiracy principles and is unconstitutional because it imputes guilt solely from association.

C. THE STATUTE, AS WRITTEN, IS UNCONSTITUTIONAL FOR ADDITIONAL REASONS.

1. *The lack of intent.*

As the Government concedes (G. Br. Rearg., p. 7), the statute as written authorizes the conviction of an accused who joins a group, knowing that it advocates forcible overthrow, not in order to further the forbidden objective but to help to realize legitimate reforms. The Court has flatly

⁵⁴ The prevailing opinion (at 403-04) expresses the same view.

⁵⁵ *Krulewitch v. United States*, *supra*, at 449 (concurring opinion).

held that such a statute is unconstitutional. *Herndon v. Lowry, supra* at 259, summarizes the decision in *Strömberg v. California, supra*, as follows:

"... where a statute is so vague and uncertain as to make criminal an utterance or an act which may be innocently said or done with no intent to induce resort to violence or on the other hand may be said or done with a purpose violently to subvert government, a conviction under such a law cannot be sustained."

- The effect of the omission of intent from the statute is
- to make evidence of membership in an organization with knowledge that it advocates illegal doctrine conclusive evidence of criminality. But *Adler v. Board of Education, supra*, holds that such membership and knowledge cannot constitutionally give rise to a conclusive presumption even of unfitness to hold public employment. The Court there sustained the New York Education Law only because it made membership in an organization with knowledge of the organization's seditious purpose merely prima facie evidence of unfitness to teach which could be rebutted by the teacher at a hearing accorded by the statute. The Court stated (at 496, emphasis supplied):

"Where, as here, the relation between the fact found and the presumption is clear and direct and is not conclusive, the requirements of due process are satisfied."

The Government asserts (G. Br. Rearg., pp. 9-10), that the majority in *Whitney v. California, supra*, affirmed the conviction without consideration of the defendant's intent. This is careless reading. The Court stated (at 366) that Whitney attacked the conviction because there was "no showing of a specific intent on her part to join in the forbidden purpose of the organization." It then held (at 367) that this contention was foreclosed by the verdict and the

decision of the state court on what was merely a disputed question of fact, "which is not open to review in this Court."

The Government's reliance on *Bryant v. Zimmerman*, 278 U.S. 63, is misplaced. No question concerning the lack of a statutory requirement of intent was raised or considered. Moreover, since the offense was merely a misdemeanor in aid of a regulatory measure, it was an offense of the kind which requires no criminal intent. *Morissette v. United States*, 342 U.S. 246, 258-59, and cases there cited.

2. The lack of an "activity" factor.

The Government makes no serious attempt to defend the application of the statute to a passive member or one whose activity is confined to attendance at meetings. It all but concedes (G. Br. Rearg., pp. 24-25) that so applied, the statute would be contrary to *De Jonge, supra*, and violate the First Amendment and due process. Nor does the Government press the proposition that the statute can be saved by confining its application to "active" members whose activity is peaceable and constitutionally protected. It urges (*id.*, 27) that the statute can be constitutionally applied to "a dedicated, full-time, proselytizing communist." Apparently this is the kind of a Communist whose membership, as earlier described by the Government (1958 Br., p. 49), "entails rigidly disciplined adherence to and labors for the organization's unlawful objective."

What is implicit in these and similar descriptive phrases (e.g. 1958 Br., p. 53) is that the membership clause is constitutional if its application is restricted to members whose conduct would authorize convictions for conspiracy to violate the "advocacy" provision of the Smith Act. But the Government does not write this restriction into its definition of an "active" member. Nor can it do so without mak-

ing the membership clause a carbon copy of the offense of conspiring to advocate forcible overthrow, a result which Congress obviously could not have intended.

D. THE INTERPRETATIONS OF THE STATUTE PROPOSED BY THE GOVERNMENT ARE IMPERMISSIBLE.

1. *Specific intent.*

We assume for the purposes of the present discussion that, contrary to what we have shown above, the membership clause would be constitutional if interpreted to require proof that the accused had the specific intent of accomplishing forcible overthrow as speedily as circumstances would permit.

The argument for this interpretation of the statute is based on a misapplication of the *Dennis* decision. *Dennis* held that a specific intent to overthrow the Government by violence was an unexpressed but necessarily implied element of the offenses defined in the "advocacy" and "organizing" provisions of the Smith Act and of conspiracy to commit these offenses. The Court did not reach this conclusion on the ground that it was required by constitutional considerations. What the Court held (at 499) was that, "The structure and purpose of the statute demand the inclusion of intent as an element of the crime. . . . Certainly those who recruit and combine for the purpose of advocating overthrow intend to bring about overthrow." Judge Hand put the same thought as follows (183 F. 2d 201, 214-15):

"Obviously one cannot teach or advocate the use of violence without specifically intending to bring about its use; *a fortiori* must that be true if one organizes a group so to teach . . . the sections carry their own specific intent."

Thus the result in *Dennis* was merely an application of the principle that an accused is presumed to intend the probable consequences of his own acts.

This nexus between act and intent is lacking in the case of the offense defined by the membership clause. It cannot rationally be said that because a person becomes or remains a member of an organization knowing it to advocate forcible overthrow, he must intend to effectuate the purpose. As the Government acknowledges (G. Br. Rearg., p. 7), membership may be accompanied by an entirely different purpose, e.g., to effectuate other and concededly legitimate policies of the organization, or to reform it. It is for this reason that the Court has refused to impute seditious intent to a member of an organization merely by virtue of his membership and knowledge that the organization has a seditious purpose. *Schneiderman v. United States*; *Knauer v. United States*; *Baumgartner v. United States*, all *supra*.

Thus, the reasoning which impelled the Court to read intent into the "advocacy" and "organizing" provisions of the statute is inapplicable to the membership clause. Moreover, the text of the statute as a whole indicates that Congress was cognizant of the distinction between acts which carry their own specific intent and those which do not. For while intent is omitted from the "advocacy" and "organizing" provisions it is included in the "literature" provision, in recognition of the fact that seditious intent cannot be inferred simply from the publication or distribution of literature that advocates forcible overthrow. Again, the "literature" provision omits knowledge of the content of the literature as an element of the offense, thus recognizing that proof of intent carries with it an inference of such knowledge. The fact that the membership clause, in contrast, focuses on knowledge (from which intent cannot be inferred) to the exclusion of intent indicates that the omis-

sion of the latter was deliberate. This conclusion is fortified by the legislative history, cited by the petitioner in *Scales* in his supplemental brief on reargument (this Term), pp. 12-14.

The Government urges that its interpretation of the membership clause is justified under the principle favoring a tenable interpretation of a statute which avoids serious constitutional issues (G. Br. Rearg., pp. 15-16). As we have seen, the *Dennis* case gives no support to this contention. *Screws v. United States*, 325 U.S. 91, and *A. C. A. v. Douds*, 339 U.S. 382, on which the Government also relies are similarly unhelpful to it.

Unlike the proposal of the Government here, the interpretation given the statute in *Screws* (at 101-03) did not involve the interpolation of additional words into the law but was based on a construction of the word "willful" which was thought not to be an innovation and which found support in the legislative history. Even so, only four members of the Court concurred in this interpretation, while three members dissented, stating (at 151), "Such transforming interpolation is not interpretation."

Douds likewise turned on the construction of language which appeared in the statute, in that case the words "believe in . . . the overthrow of the United States Government by force." The prevailing opinion (at 407) construed this phrase narrowly to mean belief in forcible overthrow "as an objective, not merely a prophecy." However, this opinion spoke for only three of the six members of the Court who participated in the case.⁵⁶ The other three participants held the belief portion of the statute unconstitutional, two (at 421-22, 444 fn. 14) specifically rejecting the interpreta-

⁵⁶ In the subsequent case of *Osman v. Douds*, 339 U.S. 846 the Court divided four to four on the belief portion of the statute.

tion given it in the prevailing opinion as impermissible, and the third dissenting on broader grounds.

As we have seen, the Government's interpretation of the membership clause cannot be inferred from the text and is contrary to the legislative intent which appears from the Smith Act as a whole as well as from the legislative history. Thus, the proposed interpolation goes much further in amending the statute than the interpretations which only a minority of the Court found acceptable in *Screws* and *Douds*. Accordingly, these cases, far from aiding the Government, are authority for rejecting its position.

2. "Activity".

Since the indictment did not charge that petitioner was an "active" member, it must be dismissed if the statute as properly interpreted makes "activity" an element of the offense.⁵⁷ *United States v. Carll*, 105 U.S. 611; cited with approval, *Morissette v. United States*, *supra*, at 270; *Pettibone v. United States*, 148 U.S. 197. Moreover, even if the Government could leap this hurdle, a reversal would be required since the issue of petitioner's "activity" was not submitted to the jury.⁵⁸

In any event, and even if the "activity" factor contributed in some way to the constitutionality of the membership clause, there is no basis for writing the Government's standard of "activity" into the statute. The Government has chosen to define an "active" member (G. Br. Rearg., p. 24) as one who devotes all or a substantial part of his time and

⁵⁷ Petitioner moved to dismiss the indictment on the ground, among others, that it did not state facts sufficient to constitute an offense (R. 2).

⁵⁸ It can hardly be contended that petitioner waived this error since the Government itself did not discover the existence of the "activity" factor until a year and a half after the trial of this case.

efforts to the organization. By that standard, a Jimmie Higgins who spends all of his time stuffing envelopes with organizational appeals for support of the Court's decisions on racial integration is an "active" member. But a member whose only work for the organization consisted in spending a day distributing a call for an immediate armed march on Washington is not "active" and therefore not punishable under the membership clause.

A statute which imposes punishment because of the quantity of an accused's "activity" without regard to its quality may make sense to the Government. Perhaps there are arguments which may be advanced in support of this standard. But the question is not whether the standard is reasonable. The question is whether Congress intended to incorporate the Government's standard of "activity" into the membership clause rather than some other standard or no standard at all. There can, of course, be no answer to this question other than that, as far as appears, Congress never gave the matter a thought. Under these circumstances, to write the Government's definition of "activity" into the statute is not to interpret but to legislate.

There is even less justification for the Government's alternative proposal (G. Br. Rearg., pp. 22-23) that the "activity" factor should be applied by the courts as a constitutional limitation on the application of the statute.³⁹ If this proposal were sound, legislation could never be invalidated for inherent unconstitutionality. For the courts would be obliged to rescue an invalid statute by supplying the requisite constitutional limitations without regard to the text of the law or other indicia of legislative intent. Furthermore, this proposal would deprive an accused of

³⁹ Assuming, contrary to what we have shown, that the membership clause is constitutional as applied to "active" members.

a jury trial on those ingredients of the offense which are supplied by judicial construction. The argument that this is permissible in the case of the "activity" factor (G. Br. Rearg., pp. 26-27) rests on a false analogy to the clear and present danger doctrine.

The proposition that the clear and present danger doctrine is to be applied by the court rather than the jury rests solely on the prevailing opinion in *Dennis* which had the adherence of only four members of the Court. The holding of that opinion (at 515) turned on the statement that the issue under the clear and present danger doctrine bears "the marks of a 'question of law'". That is doubtless true of the doctrine as reformulated in *Dennis*. For it requires (at 510) discounting the gravity of the "evil" by its improbability and then determining whether the magnitude of the resultant danger justifies the invasion of First Amendment rights. The application of this formula involves value judgments and considerations of policy which seem quite foreign to the judicial function and which certainly have never been conceived to be within the province of a jury.

The application of the "activity" factor, on the contrary, requires nothing but a simple factual determination: How much time did the accused devote to the organization? This fact question is plainly one for the jury and, under the Sixth Amendment, may not be decided by the court.

Finally, the evidence in this case fails to establish that petitioner "devoted all, or a substantial part, of his time and efforts to the Party" (G. Br. Rearg., p. 24) during the period within the statute of limitations (see *supra*, p. 73). Hence, he was not proved to have been an "active" member, and application of the Government's proposed constitutional limitation would, in any event, require his acquittal.

CONCLUSION

The judgment below should be reversed with directions to dismiss the indictment or enter a judgment of acquittal.

Respectfully submitted,

JOHN J. ABT,

320 Broadway,

New York 7, N. Y.,

Attorney for Petitioner.

APPENDIX A

Statutes Involved

1. Section 2 of the Smith Act, 18 U.S.C. 2385, as in force on the date of the indictment provided as follows:

Whoever knowingly or wilfully advocates, abets, advises, or teaches the duty, necessity, desirability; or propriety of overthrowing or destroying the government of the United States or the government of any State, Territory, District or Possession thereof, or the government of any political subdivision therein, by force or violence, or by the assassination of any officer of any such government; or

Whoever, with intent to cause the overthrow or destruction of any such government, prints, publishes, edits, issues, circulates, sells, distributes, or publicly displays any written or printed matter advocating, advising, or teaching the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United States by force or violence, or attempts to do so; or

Whoever organizes or helps or attempts to organize any society, group, or assembly of persons who teach, advocate, or encourage the overthrow or destruction of any such government by force or violence; or becomes or is a member of, or affiliates with, any such society, group, or assembly of persons, knowing the purposes thereof—

Shall be fined not more than \$10,000 or imprisoned not more than ten years, or both, and shall be ineligible for employment by the United States or any department or agency thereof, for the five years next following his conviction.

2. The Internal Security Act of 1950, 50 U.S.C. 781 ff., as amended, provides in part as follows:

Sec. 2. As a result of evidence adduced before various committees of the Senate and House of Representatives, the Congress hereby finds that—

(1) There exists a world Communist movement which, in its origins, its development, and its present practice, is

a world-wide revolutionary movement whose purpose it is, by treachery, deceit, infiltration into other groups (governmental and otherwise), espionage, sabotage, terrorism, and any other means deemed necessary, to establish a Communist totalitarian dictatorship in the countries throughout the world through the medium of a world-wide Communist organization.

(4) The direction and control of the world Communist movement is vested in and exercised by the Communist dictatorship of a foreign country.

(5) The Communist dictatorship of such foreign country, in exercising such direction and control and in furthering the purposes of the world Communist movement, establishes or causes the establishment of, and utilizes, in various countries, action organizations which are not free and independent organizations, but are sections of a world-wide Communist organization and are controlled, directed, and subject to the discipline of the Communist dictatorship of such foreign country.

(6) The Communist action organizations so established and utilized in various countries, acting under such control, direction, and discipline, endeavor to carry out the objective of the world Communist movement by bringing about the overthrow of existing governments by any available means, including force if necessary, and setting up Communist totalitarian dictatorships which will be subservient to the most powerful existing Communist totalitarian dictatorship.

Sec. 3. For the purposes of this title—

(3) The term "Communist-action organization" means—

(a) any organization in the United States (other than a diplomatic representative or mission of a foreign government accredited as such by the Department of State) which

(i) is substantially directed, dominated, or controlled by the foreign government or foreign organization controlling the world Communist movement referred to in section 2 of this

title, and (ii) operates primarily to advance the objectives of such world Communist movement as referred to in section 2 of this title; and

(b) any section, branch, fraction, or cell of any organization defined in subparagraph (a) of this paragraph which has not complied with the registration requirements of this title.

(4) The term "Communist-front organization" means any organization in the United States (other than a Communist-action organization as defined in paragraph (3) of this section) which (A) is substantially directed, dominated, or controlled by a Communist-action organization, and (B) is primarily operated for the purpose of giving aid and support to a Communist-action organization; a Communist foreign government, or the world Communist movement referred to in section 2 of this title.

(5) The term "Communist organization" means any Communist-action organization, Communist-front organization, or Communist-infiltrated organization.

(15) The terms "totalitarian dictatorship" and "totalitarianism" mean and refer to systems of government not representative in fact, characterized by (A) the existence of a single political party, organized on a dictatorial basis, with so close an identity between such party and its policies and the governmental policies of the country in which it exists, that the party and the government constitute an indistinguishable unit, and (B) the forcible suppression of opposition to such party.

Sec. 4. (a) It shall be unlawful for any person knowingly to combine, conspire, or agree with any other person to perform any act which would substantially contribute to the establishment within the United States of a totalitarian dictatorship, as defined in paragraph (15) of section 3 of this title, the direction and control of which is to be vested in, or exercised by or under the domination or control of,

any foreign government, foreign organization, or foreign individual: *Provided, however,* That this subsection shall not apply to the proposal of a constitutional amendment.

(c) It shall be unlawful for any agent or representative of any foreign government, or any officer or member of any Communist organization as defined in paragraph (5) of section 3 of this title, knowingly to obtain or receive, or attempt to obtain or receive, directly or indirectly, from any officer or employee of the United States or of any department or agency thereof or of any corporation the stock of which is owned in whole or in major part by the United States or any department or agency thereof, any information of a kind which shall have been classified by the President (or by the head of any such department, agency, or corporation with the approval of the President) as affecting the security of the United States, unless special authorization for such communication shall first have been obtained from the head of the department, agency, or corporation having custody of or control over such information.

(d) Any person who violates any provision of this section shall, upon conviction thereof, be punished by a fine of not more than \$10,000, or imprisonment for not more than ten years, or by both such fine and such imprisonment, and shall, moreover, be thereafter ineligible to hold any office or place of honor, profit, or trust created by the Constitution or laws of the United States.

(f) Neither the holding of office nor membership in any Communist organization by any person shall constitute per se a violation of subsection (a) or subsection (c) of this section or of any other criminal statute. The fact of the registration of any person under section 7 or section 8 of this title as an officer or member of any Communist organization shall not be received in evidence against such person in any prosecution for any alleged violation of subsection (a) or subsection (c) of this section or of any alleged violation of any other criminal statute.

Sec. 7. (a) Each Communist-action organization (including any organization required, by a final order of the Board, to register as a Communist-action organization) shall, within the time specified in subsection (c) of this section, register with the Attorney General, on a form prescribed by him by regulations, as a Communist-action organization.

(b) Each Communist-front organization (including any organization required, by a final order of the Board, to register as a Communist-front organization) shall, within the time specified in subsection (c) of this section, register with the Attorney General, on a form prescribed by him by regulations, as a Communist-front organization.

(h) In the case of failure on the part of any organization to register or to file any registration statement or annual report as required by this section, it shall be the duty of the executive officer (or individual performing the ordinary and usual duties of an executive officer) and of the secretary (or individual performing the ordinary and usual duties of a secretary) of such organization, and of such officer or officers of such organization as the Attorney General shall by regulations prescribe, to register for such organization, to file such registration statement, or to file such annual report, as the case may be.

Sec. 8. (a) Any individual who is or becomes a member of any organization concerning which (1) there is in effect a final order of the Board requiring such organization to register under section 7(a) of this title as a Communist-action organization, (2) more than thirty days have elapsed since such order has become final, and (3) such organization is not registered under section 7 of this title as a Communist-action organization, shall within sixty days after said order has become final, or within thirty days after becoming a member of such organization, whichever is later, register with the Attorney General as a member of such organization.

(b) Each individual who is or becomes a member of any organization which he knows to be registered as a Communist-action organization under section 7 (a) of this title,

but to have failed to include his name upon the list of members thereof filed with the Attorney General, pursuant to the provisions of subsections (d) and (e) of section 7 of this title, shall, within sixty days after he shall have obtained such knowledge, register with the Attorney General as a member of such organization.

—Sec* 15. (a) If there is in effect with respect to any organization or individual a final order of the Board requiring registration under section 7 or section 8 of this title—

(2) each individual having a duty under subsection (h) of section 7 to register or to file any registration statement or annual report on behalf of such organization, and each individual having a duty to register under section 8, shall, upon conviction of failure to so register or to file any such registration statement or annual report, be punished for each such offense by a fine of not more than \$10,000, or imprisonment for not more than five years, or by both such fine and imprisonment.

For the purposes of this subsection, each day of failure to register, whether on the part of the organization or any individual, shall constitute a separate offense.

APPENDIX B

Excerpts From the Congressional Debate on the Communist Control Act

House Majority Leader Halleck (100 Cong. Rec. 14850):

"I have as quickly as I could and as well as I could examined the language of this amendment. As I read it, it does undertake to make membership in the Communist Party a felony per se * * *. Again may I point out, as I and others pointed out yesterday, that if you make membership in the Communist Party per se a felony, then to require them to register, which is the requirement of the Internal Security Act, would require them to provide evidence incriminating themselves, and thus necessarily would excuse them from compliance with the act. The appeal that is pending now in the circuit court of appeals to determine the validity of the Internal Security Act of 1950 would be immediately written off. They will be in there with a petition to remand the case and it will be remanded. Do not scoff at that. That is the exact fact. That is the position taken by the Attorney General, by the Director of the F.B.I., J. Edgar Hoover, and by the lawyers who have studied the matters."

Representative Reed, Chairman, House Judiciary Committee (id., p. 14643):

"Section 3 of the bill, as it passed the Senate, merely provided that one who remained, or became a member of the Communist Party or organization advocating the overthrow of the Government, by force or violence, with knowledge of that purpose, and who committed an overt act in furtherance of those objectives was subject to a criminal penalty.

"That provision, as it passed the Senate, destroyed the very effective Subversive Activities Control Act of 1950, which specifically provided that membership in the Communist organization was not per se a violation

of any criminal statute. Such provision was written into the law in order that the registration and filing requirements operate effectively to control those Communist groups. Otherwise, they could have pleaded their privilege against self-incrimination and thereby avoid the requirements of the statute. The Senate version would have destroyed the very effective requirements of the Internal Security Act and would thus have defeated the very purpose for which it was written."

Senator Ferguson, a co-author of the Internal Security Act (id., p. 14723):

"Here we are creating a new crime, the crime of knowingly and willfully becoming or remaining a member of the Communist Party or an organization which is described in the bill. The section continues and defines what a member is.

I submit to the Senate this plain question: Does the Senate desire at this time to repeal the Internal Security Law which was passed in 1950, which was vetoed by the President of the United States, and which was passed over the veto of the President of the United States in the House of Representatives and in the Senate? Do we desire today, by this vote, to repeal the real keystone of the arch in that legislation? If we do, then we should vote for this amendment.

If we vote for this amendment, we cannot have registration of Communists, because to require a man to testify against himself by registration would be violating the Constitution of the United States. There is no law of the land which would require a man to violate that provision of the Constitution and register, if there was a law making it a felony, as is sought to do by this amendment, to be a member or knowingly to remain a member of the Communist organization."

Senator Butler, author of S. 3706 (id., p. 14578):

"My judgment would be very seriously swayed by an opinion of an astute attorney general which Mr. Brownell is. I think we must give weight to his opinion. I think especially is that the case when the Attorney General has also told us that to adopt the language of the Senate bill would very seriously affect or hamper the existing case brought under the Internal Security Act now in the circuit court of appeals."

APPENDIX C

Excerpt From Order of the Court Setting Scales v. United States for Reargument

“(1) Is the Membership Clause of the Smith Act, 18 U.S.C. Sec. 2385, valid under the Constitution of the United States if it be interpreted to permit a conviction based only on proof that the accused was a member of a society, group or assembly of persons described in the Act knowing the purposes thereof?

“(2) If not, is the Membership Clause constitutionally valid if interpreted as also requiring proof that the membership was accompanied by a specific intent of the accused to accomplish those purposes as speedily as circumstances would permit? Does the Smith Act permissibly bear such an interpretation?

“(3) If the Membership Clause would not be constitutionally valid as interpreted under (1) or (2), would the clause be constitutionally valid if interpreted as requiring as an element of the crime proof that the accused was an ‘active’ member? Does the Smith Act permissibly bear such an interpretation? If not, and if the clause be valid without such element, does a constitutional application of the Membership Clause depend upon any such requirement, and if so was such a requirement properly applied by the courts in this case?

“(4) Whether the ‘clear and present danger’ doctrine, as interpreted by counsel, has application to the Membership Clause, either with respect to the accused or with respect to the ‘society, group, or assembly of persons’ described in the statute. If applicable, whether such doctrine was or can now be, properly applied in this case.

“(5) Is Sec. 4(f) of the Internal Security Act, 50 USCA 780, a bar to the present prosecution? Counsel are requested to discuss the relevance of the registration provisions of that Act to this question.”



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No. ~~101~~ 9

In the Supreme Court of the United States

OCTOBER TERM, 1959

JOHN FRANCIS NOTO

v.

UNITED STATES OF AMERICA

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT**

BRIEF FOR THE UNITED STATES

J. LEE RANKIN,

Solicitor General,

J. WALTER THAGLEY,

Assistant Attorney General,

KEVIN T. MARONEY,

ANTHONY A. AMEROSIO,

Attorneys,

Department of Justice, Washington 25, D.C.

INDEX

	Page
Opinion below.....	1
Jurisdiction.....	1
Questions presented.....	1
Statutes involved.....	2
Statement.....	2
A. General evidence, not specifically linked to petitioner, establishing the character of the Communist Party as an organization which during the indictment period taught and advocated the forcible overthrow of the Government of the United States as speedily as circumstances would permit.....	3
B. Evidence, specifically linked to petitioner, further establishing the character of the Party as an advocate of force and violence, and showing petitioner's knowledge of that character and his intent with respect to violent overthrow at the earliest feasible opportunity.....	4
1. Petitioner's participation in the Party's program of systematic teaching of the principles of Marxism-Leninism, including advocacy of violent overthrow at the earliest feasible opportunity.....	6
2. Petitioner's participation in the Party's program of concentration on the nation's basic industries.....	17
3. Petitioner's association with the Party's underground activities.....	20
Summary of Argument.....	26

	Page
Argument.....	33
I. The evidence fully supports the verdict.....	33
A. The evidence as to the character of the Party's advocacy of violence during the indictment period meets the <i>Yates</i> standard of a call to forcible action at some future time.....	33
B. The jury's finding that petitioner knew the Party's character as an organization which advocated forcible overthrow in the <i>Yates</i> sense, and that he personally intended to bring about that result as speedily as cir- cumstances would permit, is likewise sup- ported by the evidence.....	42
II. Having failed to raise the issue in the court below, petitioner lacks standing to challenge in this Court the admission of evidence received at his trial. In any event, inadmissible evidence was not received.....	45
A. Petitioner lacks standing to challenge the admission of evidence received at the trial..	45
B. Inadmissible evidence was not received.....	47
1. The Lautner opinion testimony.....	47
2. The third-party declarations.....	51
III. Section 4(f) of the Internal Security Act of 1950 does not bar prosecution under the membership clause of the Smith Act.....	54
IV. The membership clause of the Smith Act is con- stitutional on its face and as applied to the facts of this case.....	55
A. Validity of the clause on its face.....	55
B. Validity of the statute as applied in this case..	55
Conclusion.....	60
Appendix.....	61

CITATIONS

Cases:

<i>Dennis v. United States</i> , 341 U.S. 494.....	27,
31, 32, 34, 35, 39, 54, 55, 59	
<i>Duignan v. United States</i> , 274 U.S. 195.....	45
<i>Frankfeld v. United States</i> , 198 F. 2d 679, certiorari denied, 344 U.S. 922.....	48, 53

III

Cases—Continued

	Page
<i>Gambino v. United States</i> , 275 U.S. 310.....	46
<i>Glasser v. United States</i> , 315 U.S. 60.....	41
<i>Husty v. United States</i> , 282 U.S. 694.....	29, 46
<i>Jencks v. United States</i> , 226 F. 2d 540, reversed, 353 U.S. 657.....	40
<i>Kessler v. Strecker</i> , 307 U.S. 22.....	46
<i>Lawn v. United States</i> , 355 U.S. 339.....	45
<i>McKenna v. United States</i> , 232 F. 2d 431.....	45
<i>McLoughlin v. Raphael Tuck Co.</i> , 191 U.S. 267.....	29, 46
<i>Pierce v. United States</i> , 252 U.S. 239.....	41
<i>Polish National Alliance v. National Labor Relations Board</i> , 322 U.S. 643.....	58
<i>Scales v. United States</i> , 260 F. 2d 21, pending on certiorari, No. 8, this Term.....	3, 31, 51, 53, 54, 55, 58, 59
<i>Scales v. United States</i> , 227 F. 2d 581, reversed, 355 U.S. 1.....	53
<i>Screws v. United States</i> , 325 U.S. 91.....	46
<i>Sibbach v. Wilson & Co.</i> , 312 U.S. 1.....	46
<i>United Brotherhood of Carpenters v. United States</i> , 330 U.S. 395.....	46
<i>United States v. Atkinson</i> , 297 U.S. 157.....	46
<i>United States v. Dennis</i> , 183 F. 2d 201, affirmed, 341 U.S. 494.....	48, 50, 53, 57-58
<i>United States v. Flynn</i> , 216 F. 2d 354, certiorari denied, 348 U.S. 909.....	59
<i>United States v. Lightfoot</i> , 228 F. 2d 861, reversed, 355 U.S. 2.....	48, 53, 54, 59
<i>United States v. Manton</i> , 107 F. 2d 834, certiorari denied, 309 U.S. 664.....	41
<i>United States v. Mesarosh</i> , 223 F. 2d 449, reversed, 352 U.S. 1.....	31, 48, 50, 53
<i>United States v. Silverman</i> , 248 F. 2d 671, certiorari denied, 355 U.S. 942.....	39
<i>United States v. Socony-Vacuum Oil Co., Inc.</i> , 310 U.S. 150.....	45
<i>Watts v. United States</i> , 220 F. 2d 483, certiorari denied, 349 U.S. 939.....	45
<i>Weems v. United States</i> , 217 U.S. 349.....	46
<i>Yates v. United States</i> , 354 U.S. 298.....	26,
	27, 28, 31, 33, 34, 35, 36, 39, 42, 49, 55, 56

Statutes and rules:

Act of July 24, 1956, c. 678, § 2, 70 Stat. 623.....	2
Internal Security Act of 1950, 64 Stat. 987, 50 U.S.C. 781, <i>et seq.</i>	2
Sec. 4(f) (50 U.S.C. 783(f)).....	31, 54
Smith Act, 18 U.S.C. 2385.....	2, 31, 52
Federal Rules of Criminal Procedure, Rule 52(b).....	46
Revised Rules of the Supreme Court of the United States, Rule 40(1)(d)(2).....	46
Miscellaneous:	
2 Wigmore, <i>Evidence</i> (3d ed., 1940), § 437.....	40

In the Supreme Court of the United States

OCTOBER TERM, 1959

No. 464

JOHN FRANCIS NOTO

v.

UNITED STATES OF AMERICA

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT**

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the court of appeals (R. 438-450) is reported at 262 F. 2d 501.

JURISDICTION

The judgment of the court of appeals was entered on December 31, 1958 (R. 451). The petition for a writ of certiorari was filed on January 23, 1959, and was granted on October 12, 1959 (R. 452). The jurisdiction of this Court rests upon 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the evidence was sufficient to sustain the conviction.

2. Whether the conviction was based on incompetent, irrelevant, remote, and prejudicial evidence.

3. Whether the immunity conferred by Section 4 (f) of the Internal Security Act of 1950 (50 U.S.C. 783(f)) bars prosecution of the offense charged in the indictment.

4. Whether the membership clause of the Smith Act is unconstitutional on its face or as applied to the facts of this case.

STATUTES INVOLVED

The pertinent provisions of the Smith Act (in the form applicable to this case¹) and the Internal Security Act of 1950 (50 U.S.C. 781, *et seq.*) are set forth in Appendix A to Petitioner's Brief, pp. 85-90.

STATEMENT

Petitioner was charged in a one-count indictment (R. 1) returned on November 8, 1954, in the United States District Court for the Western District of New York with violation of the "membership clause" of the Smith Act, 18 U.S.C. 2385, proscribing membership in a society, group, or assembly of persons who teach, advocate, or encourage the overthrow by violence of the Government of the United States, knowing the purposes thereof. Specifically, the indictment charged that continuously, from January 1946 up to

¹ The statute has since been amended by the Act of July 24, 1956, c. 678, § 2, 70 Stat. 623, to provide for an increase of the maximum fine from \$10,000 to \$20,000 and an increase in the maximum sentence from 10 to 20 years. In addition, this amendment reinstated as part of 18 U.S.C. 2385 the special conspiracy provision which had been removed when the criminal code was revised in 1948.

the date of its filing (i.e., November 8, 1954), petitioner was a member of the Communist Party, a society, group and assembly of persons who, throughout this period, taught and advocated the overthrow and destruction of the Government of the United States by force and violence as speedily as circumstances would permit, with knowledge that it did so teach and advocate and with intent to bring about such overthrow of the Government of the United States by force and violence as speedily as circumstances would permit (R. 1).

Following a trial by jury, petitioner was found guilty on April 12, 1956 (R. 436), and was thereafter sentenced to five years' imprisonment (R. 435, 436-437). On appeal to the Court of Appeals for the Second Circuit, the judgment of conviction was affirmed on December 31, 1958 (R. 451). This Court granted certiorari on October 12, 1959, and ordered the case set for argument immediately following reargument in *Scales v. United States*, No. 8, this Term (R. 452), another prosecution under the "membership clause" of the Smith Act.

The evidence adduced by the government may be summarized as follows:

- A. GENERAL EVIDENCE, NOT SPECIFICALLY LINKED TO PETITIONER, ESTABLISHING THE CHARACTER OF THE COMMUNIST PARTY AS AN ORGANIZATION WHICH DURING THE INDICTMENT PERIOD TAUGHT AND ADVOCATED THE FORCIBLE OVERTHROW OF THE GOVERNMENT OF THE UNITED STATES AS SPEEDILY AS CIRCUMSTANCES WOULD PERMIT

A mass of evidence was introduced by the government to prove that the Communist Party during the

4

indictment period (1946-1954), taught and advocated the forcible overthrow of the Government of the United States as speedily as circumstances would permit. We set forth in the Appendix, *infra*, pp. 61-68, a summary of so much of this evidence as was not specifically linked at the trial to the petitioner, but was directed generally to the character and activities of the Communist Party as an organization, knowing membership in which is proscribed by the Smith Act.

B. EVIDENCE, SPECIFICALLY LINKED TO PETITIONER, FURTHER ESTABLISHING THE CHARACTER OF THE PARTY AS AN ADVOCATE OF FORCE AND VIOLENCE, AND SHOWING PETITIONER'S KNOWLEDGE OF THAT CHARACTER AND HIS INTENT WITH RESPECT TO VIOLENT OVERTHROW AT THE EARLIEST FEASIBLE OPPORTUNITY

Petitioner was an active, informed, well-disciplined, high-level member of the Communist Party for a period of more than twenty years. At least as early as 1946, he held high-level Party offices in western New York. In that year he was Organizational Secretary of Erie County (R. 257, 263, 327, 333-334), and in 1947 he was made Erie County Chairman (R. 145, 159, 257, 264, 327, 335-336). Beginning in 1948, and continuing throughout the indictment period (1946-1954), he was Chairman of the Western New York sub-district of the Communist Party (R. 6, 146, 257, 289, 328, 350).² As such, he was responsible for

² The Western New York sub-district was formed at a conference held in Buffalo in 1946 and attended by such state and national leaders of the Party as William Z. Foster and Robert Thompson (R. 332-333). The sub-district, which was also known as the "Upstate District" (R. 333), comprised an area

the Party's activities in that sub-district and his responsibilities included providing leadership and guidance to other Party functionaries, building the Party's numerical strength, and developing future leaders among his co-workers (R. 146). In addition, he was a member of the New York State Committee and the State Board (R. 147, 149-150, 163) and attended Party county, state, and national conventions (R. 148, 151, 275-276, 350-352).

The evidence summarized below, unlike that summarized in the Appendix (*infra*, pp. 61-68), relates mainly to petitioner's own statements, actions, and conduct. In addition to constituting further evidence—supplementing that set forth in the Appendix—of the character of the Communist Party as an organization which advocates the violent overthrow of the Government of the United States at the earliest feasible opportunity, it shows petitioner's personal knowledge of, intent with respect to, and activities in furtherance of, the Party's violent revolutionary aims and purposes.

within the state of New York bounded on the east by a line drawn through Watertown and on the south by a line drawn through Utica and Binghamton. It included, in addition to these cities, the cities of Syracuse, Rochester, Buffalo, and Niagara Falls (G. Ex. 7, R. 6-7). According to petitioner's own figures, there were, in the fall of 1949, 1,200 "well educated, well trained" Party members in this area (R. 291). A sub-district, in the Party's organizational structure, was a unit which was one level higher than a section and one level below a district (R. 19).

1. PETITIONER'S PARTICIPATION IN THE PARTY'S PROGRAM OF SYSTEMATIC TEACHING OF THE PRINCIPLES OF MARXISM-LENINISM, INCLUDING ADVOCACY OF VIOLENT OVERTHROW AT THE EARLIEST FEASIBLE OPPORTUNITY .

Petitioner received his early training for positions of leadership in the Party in the period from 1933 to 1938 when he was first, a member, and later, president, of the Rochester Young Communist League (R. 207-210), "a training ground for young people in the principles of Marxism and Leninism" (R. 207).³ Witness Dietch testified that he and petitioner, as members of a Young Communist League club in Rochester, New York (R. 207), attended a series of educational meetings conducted by that group in 1935 and 1936 (R. 210-228, 254-255). In the first series of lectures, which were conducted by Jim West, a Young Communist League organizer from Buffalo (R. 211), the group studied a pamphlet entitled *Young Communists and the Path to Soviet Power* (G. Ex. 64, R. 210-218). The pamphlet noted that the 13th Plenum of the Communist International had "estimated the present situation as one of a new round of revolutions and wars, and that the struggle for Soviet power is on the order of the day." It also

³ Witness Dietch testified that the Young Communist League was the "Youth Army of the Communist Party, * * * a training ground for young people in the principles of Marxism and Leninism, * * * to school them to be future Party members" (R. 207). In *Why Communism?* (G. Ex. 11, R. 49), published in 1935 (R. 49), the author, M. J. Olgin, who was then a leader of the Communist Party (R. 220), described the League as "the revolutionary organization of the young workers" which functions "[h]and in hand with the Communist Party and under its guidance" (G. Ex. 11, p. 71; R. 227).

stated that "every leading Comrade, every league member" should study a report (which was contained in the pamphlet) by Comrade Chemadanov to the Plenum of the Young Communist International, "so as to prepare for the coming decisive class struggles" (G. Ex. 64, p. 4; R. 212). The Chemadanov report urged League members to infiltrate into factories and mills, organizations, universities, schools, and "wherever the youth are to be found", "to carry on the propaganda of Leninism" in order to give the youth "a revolutionary, clear and plain outlook." It further declared that this revolutionary propaganda was to be backed up "by concrete revolutionary actions" in the form of active participation in the class struggle and in strikes under the leadership of the Communist Party so that the youth "will understand that there is no other way out of the crisis except the revolutionary way" (G. Ex. 64, p. 21; R. 215).

In the summer of 1935, [redacted] and petitioner attended another series of Young Communist League classes held at the Communist Party headquarters in Rochester (R. 218, 254-255). The subject matter studied and discussed at these classes was Lenin's *State and Revolution* (G. Ex. 66, R. 219, 255).

*The class particularly discussed the portion on class society in the state (R. 219). Included in that section is the following passage (Gov. Ex. 15, p. 19; R. 139):

We have already said above and shall show more fully later that the teaching of Marx and Engels regarding the inevitability of a violent revolution refers to the bourgeois state. It cannot be replaced by the proletarian state, the

Dietch testified as follows to what the students at these classes were taught (R. 255):

The instructor at that class, Phil Parr, stated since no ruling class in history had ever been known to willingly surrender its state power without a violent conflict, and that the American ruling class would not be any exception, consequently there would be no alternative and it would be historically necessary for us to resort to forceful and violent means to overthrow our own ruling class, and in that manner to win state power or, and to establish the dictatorship of the proletariat, which would eventually with the withering away of the state develop into socialism and ultimately into a Communist classless society, which was the ultimate aim of the Party.

In the summer of the following year, Dietch and petitioner attended another series of Young Communist League classes held in Rochester (R. 220). At these classes, M. J. Olgin's *Why Communism?* (G. Ex. 11, R. 48) was studied "pretty well in its entirety" (R. 220). This book contains a frank expression of the Party's aims and objectives (G. Ex. 11, pp. 32, 42, 60, 61; R. 221, 224, 225):

dictatorship of the proletariat through withering away, but, as a general rule only through a violent revolution.

The replacement of the bourgeois by the proletarian state is impossible without a violent revolution.

The substance of this passage was also taught in the 1941 National Training School and in the party classes Lautner taught from 1946 to 1948 (R. 139-140).

9

The capitalist state is a glaring fact. It is flesh and blood of the capitalist system. It stands in the way of the workers' program towards a new free life. Can it be abolished by gradual transformation? Those who say it can are the staunchest supporters of the capitalist robbers and the most active promoters of imperialist wars. Their theory is not harmless, indeed it is a poisonous theory. It is a smoke screen behind which cruel capitalist exploitation is hiding. We Communists say that there is one way to abolish the capitalist state, and that is to smash it by force. To make Communism possible the workers must take hold of the state machinery of capitalism and destroy it.

* * * * *

We Communists do not say to the workers that they have to begin the civil war today or tomorrow. We say that the civil war is the inevitable outcome of long and arduous struggles against the capitalists and their state and that these struggles must be made the everyday practice of the working class.

* * * * *

Can it be Done? It has been done more than once. * * *

* * * * *

Can a revolution be won? Capitalism creates a situation where large masses of the people are dissatisfied, embittered, emboldened by intolerable hardships. Capitalism itself prepares the conditions for its cataclysm. If under conditions for a severe capitalist crisis the majority of the working class is ready to wage a de-

terminated armed fight for the overthrow of the capitalist system, then the revolution may be victorious, provided there is in existence a mass Communist Party recognized by the workers as their leader in struggles against capitalism.

Witness Geraldine Hicks first met petitioner at a general membership meeting in Buffalo late in 1946 when he was Erie County Organizational Secretary (R. 257). At this meeting, petitioner gave a short speech on recruiting and told the members that the county organization wanted to build a stronger Communist Party by recruiting as many new members as it could, especially among veterans, industrial workers, and youth groups (R. 263). However, at a meeting a few months later, when a Party member suggested that the Party hold public meetings and distribute literature in the neighborhoods to stimulate interest, petitioner disapproved the suggestion, stating that Communists did not work that way and that they wanted people that they knew and could trust (R. 264-265).

In 1947, witness Charles Regan, who had joined the Communist Party in 1943 at the request of the F.B.I. (R. 325-326), received a notice which was signed by petitioner to attend a meeting on March 17th at Party Headquarters (R. 338). At this meeting, petitioner gave the main report in which he stated that "the present time we were going through was the same as in Marx and Lenin, and * * * it would eventually lead to a crisis" (R. 339). Shortly thereafter, petitioner attended a meeting of the Party's General Motors Club in Buffalo. At that meeting,

Elmer Lumpkin, another Party member, reported that a local newspaperman had recently visited his home and had asked him a lot of questions which he had answered. Petitioner became upset and admonished Lumpkin for permitting the newsman to enter his home and for answering his questions (R. 339-340). Referring to the reporter, petitioner said: "Sometime I will see the time we can stand a person like this S.O.B. against the wall and shoot him" (R. 340).

At another meeting that same year, petitioner described the United States as "the World's leading imperialistic country" (R. 340-341), and some time later he attended classes on the subject of imperialism, conducted by three leading Party members in the Buffalo area, at which Lenin's book on imperialism was used (R. 341-342; G. Ex. 17).

In the summer of 1947, petitioner announced that classes on Marxism would be held for industrial workers. Witness Regan was selected to attend these classes which were taught by Irving Weisman, a county organizer from Binghamton, New York, who Regan was told was one of the leading Marxists in New York State. Weisman used *Foundations of Leninism* (G. Ex. 13) and *Left Wing Communism, An Infantile Disorder* (G. Ex. 16) in conducting the classes, and told the students that they were "very fortunate in having access to these books" and that "everything in these books was coming true today" (R. 342-343).

* Pertinent excerpts from this work are quoted in the Appendix, *infra*, pp. 64-65.

Witness Regan testified that he and petitioner attended two sessions of a series of Party classes conducted by Martha Lewis in the late summer of 1947. At these sessions, Miss Lewis used Stálin's *Foundations of Leninism* (G. Ex. 13), and particularly the section discussing the Communist Party (R. 344).^{*} Witness Hicks was apparently describing these same classes when she testified that she attended, along with ten or twelve other persons including petitioner, two days of classes conducted by Miss Lewis at Party Headquarters in Buffalo in August 1947 (R. 266-267). Miss Hicks said that the subject at the first session was the Communist Party's relations with trade unions. The students were taught that the working class should be educated to know the importance of abolishing capitalism and establishing socialism

^{*}Included in this section is the following passage (G. Ex. 13, p. 107; R. 345-346):

The new period is one of open class collisions, of revolutionary action by the proletariat, of proletarian revolution, a period when forces are being directly mustered for the overthrow of imperialism and the seizure of power by the proletariat. In this period the proletariat is confronted with new tasks, the tasks of reorganizing all Party work on new, revolutionary lines, of educating the workers in the spirit of revolutionary struggle for power * * *

Hence the necessity for a new Party, a militant Party, a revolutionary Party, one bold enough to lead the proletarians to the struggle for power, sufficiently experienced to find its bearings amidst the complex conditions of a revolutionary situation, and sufficiently flexible to steer clear of all submerged rocks on the way to its goal.

Without such a Party, it is useless even to think of overthrowing imperialism and achieving the dictatorship of the proletariat.

and that the best school for this would be the Communist Party (R. 267). The subject matter on the second day, Miss Hicks testified, was the Communist Party as the vanguard of the working class. Miss Lewis told the students that in order to be a real vanguard they "should have a knowledge of revolutionary theory" and that without this they would not be able to lead the working class (R. 267).

In the fall of 1947, a "going away" party was held in petitioner's honor to celebrate the occasion of his leaving the Buffalo area to attend the Party's National Training School in New York City (R. 346). After his return, he announced at the first general membership meeting, in January 1948, that the Party's National Board was concerned about security and expected the state and county organizations to act on their own initiative in instituting security measures. As Erie County Chairman he passed down the same directive to the Club leaders in Erie County (R. 347). At the same meeting, petitioner announced that educational classes would be held later that year on a book called *Theory and Practice of the Communist Party, First Course* (G. Ex. 71), to be taught by a teacher coming from New York City (R. 268-270).

At a general membership meeting for the Buffalo area, held in the spring of 1948, petitioner stated that the Party wanted to organize a strong American Marxist Party and, in connection with a Party "ideological campaign," called for the wide dissemination of *The Communist Manifesto* (G. Ex. 8), *History of*

the *Communist Party, Soviet Union (Bolsheviks)* (G. Ex. 20), and *Ten Classics of Marxism* (G. Ex. 73), which includes, among other works, *Foundations of Leninism* and *State and Revolution* (R. 270-272, 347-348, G. Ex. 72). At an enlarged County Committee meeting in May, he urged the necessity for "a strong revolutionary Party" and told the membership that "they should be a revolutionary group that should take action at the proper time" (R. 272).

In June 1948, petitioner presided at the Erie County Convention of the Party and spoke of the National Board's Draft Resolution for the forthcoming national convention. During the course of this speech he said that the capitalist class "was its own grave digger" and described Earl Browder—the former General Secretary of the Communist Party of the United States who had been expelled from the Party at the 1945 National Convention for supporting the "revisionist" policies of peaceful coexistence with capitalism and the end of the class struggle (R. 87-105, 153)—as a "hand-shaker of Wall Street" (R. 274, 350-351).

In the summer of 1948, witness Regan attended the last session of a series of classes which had been taught by George Squires, a teacher at the Party's Jefferson School in New York City who had come to Buffalo to conduct the classes. Petitioner addressed the students and congratulated them on their activity, stating that he hoped that they would become leaders

¹ In Communist Party parlance, "revisionism" is a right deviation from Marxism-Leninism—"an effort to revise the basic concept of Marxism-Leninism" (R. 88).

of the Party in the future (R. 353). Al Lutzki, Erie County Organizer, announced at the same meeting that another series of classes would be held in the near future (R. 353). Regan attended these classes, conducted by Elizabeth Lawson, another teacher from the Jefferson School, which lasted about one full week. Regan recalled that during a particular session Miss Lawson said that a person had once asked her whether it was possible for him to own twenty pairs of shoes in the Soviet Union. Miss Lawson told the class that "he was the kind of a guy they hoped to shoot some day" (R. 353-354). County Organizer Lutzki, another instructor at this series of classes, taught a class on strategy and tactics. In discussing the work of the Communist Party in unions, he described Walter Reuther as a "social democrat." One of the students asked him what a social democrat was and Lutzki replied that "a social democrat was an evolutionist who waited for socialism" whereas "the Communist Party would achieve socialism through revolutions" (R. 354).

Witness Greenberg who, as a student, had joined the Communist Party in Niagara Falls, New York, in 1947 (R. 382-383), met petitioner in the fall of 1948 (R. 385-386). In October, petitioner discussed with Greenberg the starting of an educational program for the Party group in Niagara Falls (R. 386) and from time to time thereafter furnished the Niagara Falls group with many of the familiar Marxist-Leninist "classics," including the *Ten Classics of Marxism*, in connection with this educational program (R. 386-388). In the latter part of October 1948, petitioner

proposed to Greenberg the possibility of the latter's taking the job of organizer in Erie County but told Greenberg that it would be necessary for him to attend a Party school in New York City in preparation for the job (R. 388).

In November 1949, petitioner told a group of Party members that the top leaders of the Communist Party who had recently been convicted for violation of the Smith Act were "the finest people in the United States" because "they were willing to make any sacrifice, go to jail or lay down their lives to carry on the work" (R. 290-291). Shortly thereafter, petitioner began furnishing witness Joseph Chatley, a local Party member, who had joined the organization at the request of the F.B.I. the year before (R. 288), with Party literature (R. 291-294). In September 1950, he gave Chatley copies of *History of the Russian Revolution* (G. Ex. 75) and *The Proletarian Revolution and the Renegade Kautsky* (G. Ex. 76), and told him that the former volume was the best book that had ever come into his hands. At the same time, he told Chatley that if there were any points the latter did not understand after re-reading the book, he (petitioner) would be happy to clear them up (R. 294-295). During this same month, he told Chatley that "the time would come when there would be a show-down, working people will stand just so much." "It might take several years" he said, "it will result in bad times, but in the end it will result in a turn in the country to Marxism and Leninism." "[T]o bring it to that glorious end," he told Chatley, "he was willing to suffer anything" (R. 298).

2. PETITIONER'S PARTICIPATION IN THE PARTY'S PROGRAM OF CONCENTRATION ON THE NATION'S BASIC INDUSTRIES

As a leader of the Party's upstate sub-district, petitioner was also responsible for, and actively participated in, implementing in that district the Party's program of industrial concentration by which it concentrated its activities in basic industries and the largest industrial plants. In February or March 1947, petitioner instructed witness Regan to attend a conference in New York City for the purpose of creating a Communist Party commission within the United Auto Workers Union. Regan attended the conference and met with Hal Simon, the Party's New York State Trade Union Director, and others. They discussed penetration of the U.A.W. by the Communist Party and decided to concentrate on building the Party within various automobile manufacturing shops whose employees were represented by the U.A.W. The plan was to send Party members to the areas where these shops were located for the purpose of acquiring jobs, in the hope that they would eventually assume positions of leadership in the union. Simon instructed Regan to return to Buffalo to secure information for him regarding the number of Party members in that area who were members of the U.A.W. (R. 336-338). After Regan returned to Buffalo, he reported the results of the conference to petitioner (R. 336).

In the early part of 1948, petitioner announced at a general membership meeting in Buffalo a "Draft Building Plan for Erie County" (G. Ex. 72). This plan called for the recruitment of 135 new members

by July 31st, including 40 from the steel industry, 30 from the electrical industry, 6 from the brass industry, and 3 from the railroad (G. Ex. 72; R. 270-271). A short time later, he told other local members that the Party would concentrate on the General Motors Chevrolet Plant at Delavan Avenue in Buffalo, which he described as a "key" shop; and that Party members from New York City were coming to Buffalo to try to get jobs at the plant (R. 348-349). Subsequently, Party members from Corning, New York (R. 349), and New York City (R. 359-360), came to Buffalo for this purpose.

In August 1948, Russell De Pasquale, the Party's local director of steel concentration, gave Regan a pamphlet containing instructions on steel concentration (G. Ex. 86) which directed every club to discuss it at the next meeting. According to the pamphlet, the three basic industries were steel, railroads, and mining. "These are basic to the National economy, that is if any one or all three are shut down by strike our economy is paralyzed. It is necessary for a Marxist revolutionary party to be rooted in these industries" (G. Ex. 86; R. 352-353).

In January 1949, the upstate sub-district held a conference in Rochester on concentration work. Petitioner was present and gave the main report. He stated that the sub-district's principal task was to build the Party in the steel and electrical manufacturing shops in Buffalo (R. 356-357). Another speaker at the conference, Hal Simon, discussed the strategy and tactics of infiltrating into industrial shops and emphasized the importance of steel because

an "entire section of industry within the country depended on steel" (R. 357). Early that same year, petitioner attended another conference on concentration held in New York City. There were about 1,000 people at this conference including national leader Henry Winston and a host of top leaders of the New York State Communist Party. At the conference, petitioner presided over a discussion panel dealing with Party work in the shop (R. 357-358). He stated that the "Lenin method of work within the shop was to decide upon a particular dependent within the shop, that the shop as a rule depended upon, to suspend production * * *" (R. 358). Therefore, it was the job of every Communist to know the people, executives, and product of a company and to direct his attention on the key department or, better still, get a job in that department (R. 357-358). In September 1949, petitioner met in Buffalo with a number of Party members who were active in the industrial concentration program and laid plans for building a Communist Party club for railroad workers (R. 360).

In the fall of 1949, shortly after becoming a member of the Communist Party (R. 287-288), witness Chatley was asked to come to a meeting at the home of Michael and Frances Clune, two local Party members who had been influential in securing his membership. At the meeting, Chatley was introduced to petitioner who asked him a great many questions concerning his background in labor work, the unions he had been with, and the type of work he had done. Petitioner also asked Chatley what knowledge he had of Marxism-Leninism. Chatley replied that he knew

very little of Marxism or Leninism. Petitioner then told him that because of his work he would be extremely valuable to the Communist Party and most valuable if it were not generally known that he was a Party member. He advised that Chatley should "work it sort of underground" (R. 289-290). In March or April 1950, petitioner asked Chatley to try to get various union stewards to attend meetings of a group known as the East Side Business Group. He explained that if these stewards attended these meetings they would meet other Party members who might influence them to join the Party (R. 296-297).

3. PETITIONER'S ASSOCIATION WITH THE PARTY'S UNDERGROUND ACTIVITIES

Following the National Convention of the Communist Party in 1948, petitioner, who had attended as a delegate from the Western New York sub-district (R. 153), reported to the sub-district membership (at a meeting in August 1948) the results of the convention. He explained that fewer national committeemen had been elected at the 1948 convention than in 1945, because the Party had decided, in a security effort, to keep potential leaders out of office. He stated, however, that these people "would come forward in an underground movement and give leadership to the Party" (R. 351-352).

Witness Lautner's main assignment in 1948 and 1949 was to help build the underground organization of the Communist Party in New York State (R. 164). The job involved building a parallel organization with the existing structure of the Communist Party, inte-

grating about ten percent of the Party membership (R. 164). The problem was to find that ten percent of the Party membership which would enable the Party to function as an organized group under any and all conditions (R. 165). See Appendix, *infra*, p. 68. The key criteria for selection as part of this ten percent was to be absolute loyalty and devotion to the Party (R. 166). It was considered necessary to supply the underground organization with printing presses, money, hiding places for Party leaders, and "drop" places to leave written messages (R. 164-165). By 1950 the Party had organized the complete basic structure of the underground system in New York (R. 170).

In January or February 1949, petitioner and other county leaders were called in to Party headquarters in New York City and were briefed concerning the setting up of this underground apparatus and were told that they would be contacted later and informed of their role in the new system (R. 169). In accordance with instructions from his superiors, Lautner divided the State of New York into three underground "areas". Area One included New York County with all the industrial sections and the cultural division. Area Two included Kings, Queens, Bronx, and Westchester Counties. Area Three consisted of everything north of Poughkeepsie, including the Buffalo sub-district and the tri-city area of Albany, Schenectady, and Troy (R. 167). Petitioner was placed in charge of Area Three (R. 168-169).

In the spring of 1949, petitioner asked Lautner to

help him get a photo offset machine (R. 171).^{*} Lautner agreed to furnish him with the machine if he would make arrangements for picking it up, which petitioner did (R. 172). Sometime later, at a New York State Board meeting, petitioner told Lautner that the driver of the truck which picked up the printing press suspected that he had been followed. At the same meeting, Lautner agreed to supply Area Three with forty-five hand mimeograph machines (R. 172).^{*} In the late summer of 1949, petitioner contacted witness Greenberg, who owned a dry-cleaning establishment in Niagara Falls, and discussed with him the possibility of setting up the photo offset machine, which petitioner had acquired from Lautner, in Greenberg's establishment. Petitioner told Greenberg that he was looking for a suitable location that would not be well known and assured him that if he agreed to have the machine set up on his premises petitioner would see that it was operated only after the close of business hours (R. 393).

In October 1949, Lautner was sent to Buffalo to meet with the top three men in that area, petitioner, Al Lutzki, and a person named Steele from Jamestown, and to check on the progress of the underground system in Area Three (R. 168, 170-171). Petitioner told Lautner that the photo offset machine had not yet

^{*} A photo offset machine is a high-speed printing machine that can produce as many as 3000 copies an hour. "It is powerful and good enough" to print pamphlets, folders, and leaflets, as well as other types of material (R. 171-172).

^{*} These machines were manufactured by the Party itself in White Plains, New York, and were specifically designed to be taken apart for concealment purposes (R. 172-173).

been permanently installed but that he had one or two places in mind (R. 173). The two then went to Greenberg's dry-cleaning place in Niagara Falls to inspect it as a possible site. Upon inspection, however, Lautner rejected it because the floor was not solid enough to support the heavy equipment (R. 173-174, 393-394).

In June 1950, petitioner gave witness Hicks a questionnaire and asked her to fill it out. He explained that this was being done for security reasons as the Party was contemplating the necessity of operating underground and wanted to ascertain the loyalty of its members. The questionnaire contained about forty questions concerning the member's background in the Party, including inquiry whether the member was suspicious of any other Party member or knew of any member who "had turned sour to the Party" (R. 277).

In March 1951, petitioner contacted witness Dietch at his home in Rochester and told him that because of the political situation the Party might have to go underground and that therefore it was interested in setting up some sort of printing apparatuses (R. 235). He asked Dietch, who was a salesman in the printing equipment business (R. 234, 236), to go to Buffalo to keep a secret rendezvous with a person who would be known to him as "Jack" and to confer concerning the possible sale of some printing equipment (R. 236). Two weeks later, Dietch met "Jack" at a pre-arranged meeting place in Buffalo. Jack told him that the Party was interested in acquiring small, light-weight, portable, and easily dismantled printing equipment.

Dietch subsequently furnished "Jack" with two multi-lith presses (R. 236-238). "Jack" had the invoices (G. Exs. 69, 70) made out to a "Jack Phillips" of Falconer, New York. Both the name and address, however, were fictitious (R. 237).

In the spring of 1951, petitioner, in the company of an individual introduced only as "Jack," visited Greenberg in Niagara Falls. Petitioner discussed with Greenberg the possibility of storing printing or mimeographing equipment in his (Greenberg's) cellar (R. 394). Greenberg agreed and the following week he met "Jack" in Buffalo and picked up the equipment which he stored in the cellar of his home (R. 394-395). In the fall of 1951, Greenberg tried to contact petitioner but experienced difficulty. Finally, sometime in the last two weeks of November, petitioner called Greenberg and they arranged for petitioner to send someone down to pick up the printing equipment and to find some other place to store it (R. 395).

In the spring of 1951, petitioner asked witness Chatley to come to his home. When Chatley arrived, petitioner escorted him out the rear door to the back yard and told him that he (petitioner) had been given an assignment which required Chatley's assistance. Petitioner told Chatley that "[t]his will probably be the most important thing you will ever do" (R. 299). He explained that "[o]ne of our top people" was trying to evade being picked up by the Government in connection with the "Atom Spy Ring business" and that it was necessary to get him out of the country before he was caught (R. 299). He asked Chatley

if the latter would harbor the man in his home for a few days before he continued on his trip westward. Chatley agreed to do so and petitioner told him that he would give him the details concerning the man's arrival and departure in a few days (R. 300). A few weeks later, petitioner called Chatley and arranged to give him these details (R. 300-301). The expected harboring of the fugitive, however, apparently never materialized (R. 301). In the summer of the same year, petitioner contacted Greenberg and asked him to locate some homes in Niagara Falls where Party members could stay in the event that they had to go into hiding. Greenberg told petitioner that he would see what he could do (R. 395).

During this period, petitioner himself was contemplating going (and later did go) underground. In November 1949, he told Chatley never to contact him by telephone but to arrange meetings with him through a third person. He also told Chatley that if he was ever called by petitioner the latter should avoid using his name on the phone (R. 291).

In September 1951, petitioner told Chatley that he expected to be picked up by the authorities "almost daily". Chatley asked him what he was going to do. Petitioner replied that he had been in contact with his superiors and had asked for instructions but as of that date had not received any. He told Chatley that whatever those instructions were he would follow them because he was willing to endure any hardship in order that the work go on. "He was," he told Chatley, "even willing to lay down his life" (R. 301). About the same time, petitioner told witness Regan that

"he was going under a disguise to conceal himself" (R. 368). He was growing a mustache and had had his hair cut short, crew-cut style (R. 368). About the middle of the month, he went to Chatley's home, appearing nervous and upset, and collected from Chatley a ten-dollar contribution to a fund to raise bail bonds for arrested Party members (R. 302). In October 1951, petitioner went to Regan's home to pick up a package of Party literature. His hair was longer and his mustache was much heavier. He told Regan that he was exhausted, that he had been doing a lot of traveling all over upstate New York, and that "he had to be on the move" (R. 369).

From 1953 to 1955, petitioner having left the Buffalo area, lived in and around Newark, New Jersey under the assumed name of Louis Peresi (R. 377-379, 396-398). He worked at the Goodyear Rubber Plant in that city (R. 400-407, 410-412).

SUMMARY OF ARGUMENT

I

The evidence supports the jury's findings.

A. In *Yates v. United States*, 354 U.S. 298, this Court construed the teaching and advocacy clause of the Smith Act as referring to the teaching and advocacy of violent governmental overthrow in the sense of a call to forcible action (now or in the future), as distinguished from mere discussion of an abstract principle. The Court was careful to point out that the action advocated need not be present action or even action at a fixed or foreseeable

future time. The trial judge here, unlike in *Yates*, instructed the jury that it could find petitioner guilty under the membership clause of the Smith Act only if it first found that the Party's teachings were calculated to incite persons to forcible action to overthrow the Government of the United States at an advantageous time—substantially the same instructions as were given in *Dennis v. United States*, 341 U.S. 494, and approved in *Yates*. The only issue here, therefore, is whether the evidence was sufficient to support the jury's finding.

The record contains substantial evidence that numerous Party leaders, including petitioner, had systematically engaged over a period of time in instructing Party members through classes, books, and periodicals in the Marxist-Leninist doctrine of violent, revolutionary overthrow of non-Communist governments, and had indicated clearly that the Government of the United States was one such government to be overthrown in this way. Considered in conjunction with the Party's actions during the same period, it is clear that the Party's inculcation of revolutionary aims and purposes was not intended as abstract discussion but as a call to violent action as soon as "the time [is] ripe." *Yates*, 354 U.S. at 392. Thus, the inference can reasonably be drawn that the Party's great emphasis on its program of industrial concentration, in which petitioner was an active participant, was action taken in order to acquire the power to paralyze the nation's basic industries when the time was ready for seizing power. Similarly, the establishment of an elaborate underground apparatus, able

to function as an organized group under all conditions, shows that the Party's advocacy of forceful and violent overthrow was no mere abstract discussion. It was such evidence of a disciplined underground organization, ready to take action based on Marxist-Leninist revolutionary dogma during periods of national emergency, which this Court indicated in *Yates* constituted evidence of "advocacy of action." 354 U.S. at 331-332.

The jury was also clearly and properly instructed that it must find that the Party advocated illegal action as defined in *Yates* within the limitations period from September 1, 1951, to November 8, 1954. As the court below held, the evidence of the Party's character, extending over a twenty-year period up to the eve of the limitations period, was sufficient to support a reasonable inference that its character continued unchanged. This inference was supported by proof tending to show that the Party's underground operated well into and through the limitations period.

B. The evidence is equally clear and sufficient to prove petitioner's unlawful knowledge and intent. Petitioner's status as a Party leader of such a rigidly disciplined and indoctrinated organization is in itself strong evidence that he knew what the Party was about, and intended to further its ends. In addition, the record shows not only that petitioner was a thorough student and teacher of Marxism-Leninism as applied by the American Communist Party, but also that he participated in Party activities which make

his knowledge and intent certain beyond reasonable doubt. Having attended meetings and conferences in which the Party's industrial concentration program and underground apparatus were discussed, and having instructed, in his role as Party leader in western New York, Party members in carrying out these activities, petitioner must have known and intended their illegal purposes. On this record, the jury had ample ground for finding the requisite knowledge and intent in petitioner's words, deeds, and history.

II

A. Petitioner, having failed to raise the issue in the court of appeals, lacks standing to challenge in this Court the admission of evidence received at his trial. In numerous decisions, the Court has refused to review issues not raised in the court of appeals, including questions concerning the proper admission or exclusion of evidence. See, e.g., *Husty v. United States*, 282 U.S. 694, 701-702; *McLoughlin v. Raphael Tuck Co.*, 191 U.S. 267, 271. While the Court has agreed to review issues not raised below in exceptional circumstances, no such circumstances exist in this case. Petitioner was adequately represented in the courts below by counsel who obviously felt that petitioner's interests would be better served by relying on more substantial grounds than the objections which he had made to the admission of the evidence in the trial court. The fact that petitioner's present counsel apparently disagrees with his former counsel on this score does not justify ignoring an established policy of this Court.

B. In any event, the evidence petitioner attacks as inadmissible was relevant and competent.

1. The testimony of witness John Lautner concerning the aims and objectives of the Communist Party, the meaning of terms in the Party's Constitution, and in explanation of a particular passage appearing in *Political Affairs*, the Party's official theoretical organ, were all relevant to a material issue in the case—i.e., the teaching and advocacy of the Communist Party during the indictment period. Lautner's long career as a high-level functionary of the Party until 1950 qualified him to testify as an expert concerning these matters. Thus, his opinion testimony, based on his experience in the Party and his previous testimony concerning the Party's teaching and advocacy, was competent testimony, relevant to a material issue.

2. It was also proper to receive evidence as to the nature and character of the Communist Party which was not directly linked to petitioner. The first element to be proved in a "membership" case is that the group or society was one which taught and advocated the forcible overthrow of the Government. To limit such proof to acts and statements of the particular individual charged (or done or uttered in his presence) is unacceptable because the group's character cannot be established solely by proof of the acts and statements of an isolated individual. Instead, the character of an organization can only be shown by adducing evidence of the acts, statements and publications of its officers, leaders, and official spokesmen.

Nor was the evidence too remote to have relevance. On the contrary, the evidence here "contained links in Party teachings sufficient for the jury to find a continuity of Party purposes and teachings through the 1930's up to the indictment period." *United States v. Mesarosh*, 223 F. 2d 449, 455 (C.A. 3), reversed on other grounds, 352 U.S. 1. At the least, admission of this evidence was not an abuse of the trial court's discretion in deciding upon the relevancy of submitted evidence.

III

Petitioner argues that Section 4(f) of the Internal Security Act of 1950 was intended to immunize Communists from prosecution under the membership clause of the Smith Act. For the reasons outlined in the government's 1958 and 1959 briefs in *Scales v. United States*, No. 8, this Term (pp. 68-74 and 33-36, respectively), we submit that this contention is erroneous.

IV

The membership clause of the Smith Act is constitutional on its face and as applied in this case.

A. In the government's 1958 and 1959 briefs in *Scales* (pp. 38-56 and 5-33, respectively), we have shown, on the basis of the principles enunciated in *Dennis* and reaffirmed in *Yates*, that under any of a number of alternative interpretations the statute is valid on its face. We respectfully refer the Court to that discussion.

B. If, as we believe, petitioner has failed to show that the membership clause is void on its face, he

also fails to show its invalidity as applied to him. It was proved that the Communist Party teaches and advocates the overthrow of the Government by force and violence, that petitioner knew this, and that he personally intended the accomplishment of that objective. Petitioner was shown to be a Party leader in a significant area, teaching and advocating its doctrines, and actively working for their implementation. Petitioner's participation in the underground apparatus demonstrates that his activity in behalf of important Party purposes continued into and throughout the statutory period.

The fact that neither petitioner alone nor the Party as a whole had the power to overthrow the Government does not immunize him. It was no less clear in *Dennis* that the Party lacked such power currently or at least in the near future. *Dennis* thus teaches that Congress may act against "an attempt to overthrow the Government by force, even though doomed from the outset because of inadequate numbers or power of the revolutionists * * *." *Dennis*, 341 U.S. at 509. This same power which allows Congress to act against a conspiracy to organize the Party is at least equally available to strike against the Party-in-being in the only way that the Party can function and be reached—through its members.

Petitioner claims that this Court in *Dennis* found a clear and present danger only because of the tense international situation at that time and that this situation no longer exists. This contention is obviously without substance. During most of the statutory period here (September 1951 to November 1954), which

began just after the beginning of the Korean War, the United States was engaged in armed combat against Communist North Korea and forces from Communist China. It scarcely requires argument that that period was not constitutionally less fraught with clear-and-present danger than was the time from 1945 to 1948, considered by the Court in *Dennis*.

ARGUMENT

I

THE EVIDENCE FULLY SUPPORTS THE VERDICT

A. THE EVIDENCE AS TO THE CHARACTER OF THE PARTY'S ADVOCACY OF VIOLENCE DURING THE INDICTMENT PERIOD MEETS THE *YATES* STANDARD OF A CALL TO FORCIBLE ACTION AT SOME FUTURE TIME

In *Yates v. United States*, 354 U.S. 298, 312-333, this Court construed the teaching and advocacy clause of the Smith Act as referring to the teaching and advocacy of violent governmental overthrow in the sense of a call to forcible action (now or in the future), as distinguished from "mere doctrinal justification of forcible overthrow" or the advocacy of force "as an abstract principle" (*id.* at 318, 321). In thus distinguishing between "advocacy of abstract doctrine" and "advocacy of action" (354 U.S. at 320), the Court was careful to point out that the "action" advocated, to come within the Act's proscription, was not required to be present action, or immediately impending action, or even action to be taken at a fixed or foreseeable future time. Referring to the fact that what "was condemned in *Dennis* [*v. United States*, 341 U.S. 494]" was "in-

doctrination preparatory to action", and adverting to "the holding in *Dennis* that advocacy of violent action to be taken at some future time was enough," the Court epitomized its ruling as relating to "advocacy or teaching in the sense of a call to forcible action at some future time" (354 U.S. at 320, 322, 329; emphasis added). When this time will occur is, necessarily, not calculable in advance. For, as the Court noted, the summons to present, or imminent, action will not come until "the time [is] ripe" (*id.* at 332). And that will occur only when the Party's leaders "fe[el] that the time ha[s] come for action" (*Dennis*, 341 U.S. at 511). Both *Dennis* and *Yates*, in short, make clear that the particular time in the future when the action advocated is to take place is unimportant so far as enforcement of the advocacy clause of the Smith Act is concerned; what is essential is that it be in fact *action* that is advocated, *i.e.*, forcible action to be taken by the persons to whom the advocacy is addressed, whenever the signal for such action is received from the Party leaders.¹⁰

The trial judge charged the jury that, in order to convict the petitioner, it must first find that the Party advocated overthrow of the Government in the sense of inciting persons to such action (R. 424; 426-427):

¹⁰ Obviously, this signal will not be given until the Party leaders think that the venture's prospects of success are good. It is clear, however, both from *Dennis* and *Yates*, that this is not a bar to the present enforcement of the Smith Act's prohibitions against present advocacy of future violence.

In the orderly consideration of the case the first question for your consideration will be whether, between September 1st, 1951 and November 8th, 1954, the Communist Party of the United States was a group or society which was teaching and advocating the overthrow and destruction of the United States Government by force and violence as speedily as circumstances would permit. * * *

* * * * *

It is not unlawful for a person or group of persons to believe or to teach that the Government of the United States should be completely changed. It is not unlawful to publicly advocate and urge a complete change in the government by peaceful and constitutional means. * * *

It is not unlawful to teach that the Communist Party founded by Marx and Lenin actually did advocate force and violence as a means to accomplish the aim of the party at that time. * * * It is entirely lawful to teach that Marx and Engels advocated a revolution by force and violence. *But it becomes unlawful when persons are urged to action to overthrow by force and violence the Government of the United States when the time becomes appropriate. It is the use of language reasonably calculated to incite persons to action at the advantageous time to use force and violence or destroy the United States Government that is made unlawful by statute. [Emphasis added.]*

These instructions were substantially the same as those given in *Dennis*, 341 U.S. at 511-512, which were approved in *Yates*, 354 U.S. at 315-316, 317, n.

19. Thus, it is clear that the jury found, based on proper instructions, that the Party's advocacy met the standard of "advocacy of action" articulated in the *Yates* opinion. The only question here, then, is whether the evidence supports this jury finding. We submit that it does.¹¹

The record contains substantial evidence that numerous Party leaders, including petitioner, had systematically engaged over a considerable period of time in instructing Party members through classes, books, and periodicals in the Marxist-Leninist doctrine of violent, revolutionary overthrow of non-Communist governments (see *supra*, pp. 6-16, and *infra*, pp. 61-68), and indicated clearly that the Government of the United States was one such government to be overthrown in this way (see, particularly, *supra*, pp. 7, 8, 16, and *infra*, pp. 62-63, 65-66). Taken alone, this evidence might conceivably be viewed as showing no more than "advocacy of abstract doctrine." But, when

¹¹ In *Yates*, the charge was that the defendants themselves had conspired to advocate violent revolution. In a "membership" case, such as this, the charge is membership in an organization (namely, the Communist Party) which during the pertinent period so advocated, with the requisite knowledge and intent. The *Yates* holding of what properly constitutes advocacy of forcible overthrow under the Smith Act is thus equally germane and relevant to a membership case. The difference is that in a "conspiracy to advocate" case (such as *Yates*) it is necessary to prove that *the defendant*, personally, conspired to engage in the forbidden advocacy; in a "membership" case it suffices to prove that *the Party* (as such, and not necessarily including the defendant) engaged in the forbidden advocacy and that the defendant was a member of the Party with the necessary knowledge and intent.

seen in conjunction with the Party's *actions* during the same period, it is clear that the Party's inculcation of revolutionary aims and purposes was not intended as abstract discussion, but was in fact "advocacy of violent action to be taken at some future time" when "the time [is] ripe." Thus, the inference could reasonably be drawn that the Party's great emphasis, both in word and deed, on its program of industrial concentration (*supra*, pp. 17-20, and *infra*, pp. 66-67), in which petitioner himself was an active participant (*supra*, pp. 17-20), was action taken in order to acquire the power to paralyze the nation's basic industries when the time was ready for violent revolution. Just as industrial concentration was crucial to Soviet success in the Russian Revolution, similarly it can reasonably be inferred that this was one of the initial steps of putting the Party in this country in an advantageous position to seize power by force and violence as soon as possible. In fact, the record shows that it is a basic doctrine of the American Communist Party that the time for revolutionary and violent overthrow of the Government will come when the "objective" conditions—such as an economic crisis or war—coincide with the "subjective" conditions—the Party's leadership of the working class (*infra*, pp. 62-63).

The establishment of an elaborate underground apparatus likewise shows that the Party's advocacy of forceful and violent overthrow was no mere abstract discussion. The Party decided in 1948 to set up a national underground organization in order to

be able to function as an organized group under any and all conditions. Pursuant to this policy a national organization was to be established which consisted of a seven-level pyramid of the most loyal and disciplined ten percent of the Party's members. Each level from the top down contained a larger number of three-member groups, each group connected to a single member of a three-member group at a higher level. Each Party member knew only the two other members in his own group, a single member from a higher level, and three other members at a lower level—an arrangement which obviously protected the secrecy of the organization. In addition, "horizontal" aspects of the communications system included printing presses, "drop places" for leaving messages, and hiding places for Party leaders. By 1950, these places had been implemented in New York to the extent that the underground apparatus had been established down to the seventh level and mimeographing machines were being manufactured to supply the system (see *infra*, p. 68). And, more specifically, petitioner, as the leader of Area Three of the New York underground organization, set up in that area an apparatus which included printing presses, the use of code names, hiding places for Party leaders, pre-arranged secret meetings, and disguises (see *supra*, pp. 20-26). It was such evidence of a disciplined underground organization, ready to take action based on Marxist-Leninist revolutionary dogma during times of national emergency, which this Court

indicated in *Yates* constituted evidence of "advocacy of action." See 354 U.S. at 331-332.¹²

Petitioner argues (Pet. Br. 30-31) that the evidence concerning the Party's advocacy of violent overthrow was insufficient because the government did not adduce any evidence of such advocacy within the period not barred by limitations. The jury, however, was clearly and properly instructed that it must find that the Party advocated illegal action (as defined in *Yates*) within the limitations period from September 1, 1951, to November 8, 1954 (R. 423-424; see *supra*, p. 35). The court below held (R. 441-442; 262 F. 2d at 505) that the evidence of the Party's character, extending over a twenty-year period, was sufficient to

¹² Petitioner's contention (Pet. Br. 25-31) that the holding of the court below is inconsistent with *Yates* is based largely on the assumption that the evidence in this case is identical or, at least, substantially similar to the evidence in the *Yates* record. Though, concededly, the general pattern of the evidence in this case is similar to that in *Yates* (as it is likewise similar to the pattern of evidence adduced in *Dennis* and other Smith Act cases) we submit that it is misleading and unrewarding to undertake a general comparison of the unique factual patterns of the two cases. See, e.g., *United States v. Silverman*, 248 F. 2d 671, 677 (C.A. 2), certiorari denied, 355 U.S. 942. The determination of the Court in *Yates* that the requisite advocacy of forcible action was lacking was limited to the proof on that issue adduced in that case. With the exception of witness Lautner, none of the witnesses in this case who testified with respect to the Party's advocacy of forcible overthrow—Dietch, Hicks, Chatley, Regan, and Greenberg—testified in *Yates*. Nor was the testimony of these witnesses a mere duplication of testimony found wanting in *Yates*. See our discussion, *supra*, pp. 36-39, concerning significant aspects of their testimony, particularly with regard to industrial concentration and underground activities, viewed in the light of the *Yates* standards.

support a reasonable inference that its character remained unchanged through the limitations period, in the absence of any evidence to the contrary. See, e.g., *Jencks v. United States*, 226 F. 2d 540, 548 (C.A. 5), reversed on other grounds, 353 U.S. 657; 2 Wigmore, *Evidence* (3d ed., 1940), § 437. Supporting this reasonable inference—that the character of the Party, revealed by ample evidence up to the eve of the limitations period, remained unchanged—the government introduced proof tending to show that the Party's underground apparatus continued well into and even through the limitations period.¹³ Thus, the evidence showed that petitioner, having gone underground as part of the Party's program, continued to operate as a Party official in September and October 1951. As late as 1953 to 1955, petitioner was operating under another name while working in a basic industry in another state¹⁴ (see *supra*, pp. 25-26). Though, as petitioner stresses (Pet. Br. 31), he did introduce some evidence pertaining to the indictment period calculated to show the Party's peaceful intentions (R. 415-419), the jury could have, and obviously did, discount

¹³ It is hardly surprising that the record contains fewer direct references to the Party's advocacy of action in the limitations period than before, since the Party had gone underground and was taking security measures to prevent disclosure of its activities. And the evidence of these measures in itself indicates that the Party's basic character continued unchanged.

¹⁴ Admittedly, the record does not explicitly state that petitioner's Party superiors ordered him to leave western New York to operate in Newark. But such an inference is reasonable in view of petitioner's position as a loyal, dedicated Party member, his statement (only two years before) that he would endure any hardship or do anything for the Party (R. 301), plus the fact that he was using a false name.

that evidence as unworthy of belief, especially since there was expert testimony in the record that Party leaders often used protective language in official documents to conceal the true meaning of what they were writing (R. 192-194).

In a Smith Act case, no less than in other kinds of criminal cases, it is for the jury to judge the credibility of the witnesses and to determine what inferences are to be drawn from the evidence (*Pierce v. United States*, 252 U.S. 239, 251), and inferences which might reasonably be drawn must, in deciding whether the evidence is sufficient, be viewed in the light most favorable to the government. *Glasser v. United States*, 315 U.S. 60, 80; *United States v. Mantton*, 107 F. 2d 834, 839 (C.A. 2), certiorari denied, 309 U.S. 664. On that basis, it is submitted that the jury's finding under proper instructions that the Communist Party, during the pertinent period, taught and advocated the forcible overthrow of this Government, in the sense of *Yates*, is supported by the evidence.¹⁵

¹⁵ Petitioner contends (Pet. Br. 30) that the court of appeals held that the incitement-to-action test enunciated in *Yates* is inapplicable, in a "membership" case, to the proof of the Party's advocacy. But while the court initially stated that "the incitement to action test enunciated in *Yates* * * * is inapplicable" (R. 449; 262 F. 2d at 509), it subsequently made clear that this statement referred only to the application of *Yates* to whether the defendant *personally* engaged in forbidden advocacy: "Since defendant was not indicted for *activities* the end result of which were to culminate in action on the part of others, it was not necessary that the evidence of *his activities* meet the *Yates* test" (R. 450; 262 F. 2d at 509-510; emphasis added). This interpretation of the court's opinion is strengthened by the fact that the government assumed, in its brief in the court of

B. THE JURY'S FINDING THAT PETITIONER KNEW THE PARTY'S CHARACTER AS AN ORGANIZATION WHICH ADVOCATED FORCIBLE OVERTHROW IN THE *YATES* SENSE, AND THAT HE PERSONALLY INTENDED TO BRING ABOUT THAT RESULT AS SPEEDILY AS CIRCUMSTANCES WOULD PERMIT, IS LIKEWISE SUPPORTED BY THE EVIDENCE

The evidence also justified the jury's finding that petitioner had knowledge of the Party's character as a society of persons who advocated the forcible overthrow of the Government in the *Yates* sense, and that he intended to bring about that result as speedily as circumstances would permit. Petitioner's status as a *leader* of such a rigidly disciplined and indoctrinated organization is in itself strong evidence that he knew what the Party was about and intended to further its ends. The record, however, goes beyond this. It not only includes evidence that petitioner was a thorough student of Marxism-Leninism as applied by the American Communist Party, but also contains numerous references concerning what petitioner did and said in his leadership capacity—from which the requisite finding of knowledge and intent could reasonably have been drawn.

For example, there is testimony from witnesses Dietch, Hicks, and Regan that petitioner attended many schools and classes at which both the basic Marxist-Leninist "classics" and the more recent writings of American Communist Party leaders were studied and discussed (see, *e.g.*, R. 210-227, 254-255, 266-267, 341-342, 344). At one of these classes, in *Roche*, appeals, the applicability of *Yates* to the Party's advocacy. See Appellee's Brief, C.A. 2, No. 25156, pp. 2-37. In any event, as we have shown above (pp. 33-41), the evidence is sufficient to meet the *Yates* standards.

ester in 1935, petitioner was taught that there would be no alternative but to resort to forceful and violent means to seize power in this country (R. 254-255). At another, in Buffalo in 1947, he was instructed that without a knowledge of revolutionary theory the Communist Party would be unable to lead the working class in the task of abolishing capitalism and establishing socialism (R. 266).

At a general membership meeting in 1947, petitioner stated that the post-World War II era in this country "would eventually lead to a crisis" (R. 339). On another occasion, he spoke of a time when "they" (i.e., Communists) would be able to stand people against a wall and shoot them (R. 340). At an enlarged Erie County Committee meeting in May 1948, he told the local Party membership that they should be "a revolutionary group that should take action at the proper time" (R. 272). On another occasion he praised arrested Party leaders because "they were willing to make any sacrifice, go to jail or lay down their lives to carry on the work" (R. 291).

In September 1950, he spoke with witness Chatley about a "show-down" which, though "[i]t might take several years" and "result in bad times," would end "in a turn in the country to Marxism and Leninism," stating at the same time that "he was willing to suffer anything to bring it to that glorious end" (R. 298). When he gave Chatley a copy of *History of the Russian Revolution* (G. Ex. 75), he told Chatley that, if there was anything Chatley did not understand after reading it, he (petitioner) would be happy to clear it up (R. 294-295). Sometime later, he told Chatley

that he was willing to endure any hardship, even "lay down his life," so that the Party could continue its work (R. 301).

We submit that all of these acts and statements, together with petitioner's long history of Party identity and understanding of the Marxist-Leninist classics, support the jury's finding that he knew that the Party taught and advocated forcible overthrow of the Government (in the *Yates* sense) and that he intended to bring about that result. Moreover, petitioner actively participated as a leader in the Party's industrial concentration program (*supra*, pp. 17-20) and in the formation of its underground apparatus (*supra*, pp. 20-26)—which, as we have shown (*supra*, pp. 36-39), the jury could reasonably have inferred were the initial steps in effectuating the Party's "call to forcible action." And having established an elaborate underground apparatus in the area under his leadership, petitioner himself went underground. Since he attended meetings and conferences in which these activities were discussed, and since, in his role as Party leader in western New York, he instructed Party members in carrying them out, petitioner certainly must have known and intended their illegal purposes.

Given the nature of the offense, it cannot be expected, and it is not required, that there be more extensive evidence in the form of explicit statements by the petitioner announcing his own knowledge and intent. On this record, the jury had ample ground for finding the requisite knowledge and intent in petitioner's words, deeds, and history.

II

HAVING FAILED TO RAISE THE ISSUE IN THE COURT BELOW, PETITIONER LACKS STANDING TO CHALLENGE IN THIS COURT THE ADMISSION OF EVIDENCE RECEIVED AT HIS TRIAL. IN ANY EVENT, INADMISSIBLE EVIDENCE WAS NOT RECEIVED

A. PETITIONER LACKS STANDING TO CHALLENGE THE ADMISSION OF EVIDENCE RECEIVED AT THE TRIAL

Petitioner contends (Pet. Br. 35-41) that he was prejudiced by the admission of allegedly incompetent, irrelevant, and remote evidence. Though he made timely objection at the trial to the admission of this evidence, he abandoned his objections by failing to raise this issue in the court below. See Appellant's Brief, C.A. 2, No. 25156, p. 4. Accordingly, the issue was not considered by the court of appeals (see R. 438-450; 262 F. 2d 501); nor was it the duty of that court to search the record in order to do so. See, e.g., *Watts v. United States*, 220 F. 2d 483, 485 (C.A. 10), certiorari denied, 349 U.S. 939; *McKenna v. United States*, 232 F. 2d 431, 438 (C.A. 8).

We submit that under these circumstances petitioner should not be permitted by raising the issue here to breathe new life into an issue previously allowed to die, by his own choice, in the court below. "Only in exceptional cases will this Court review a question not raised in the court below." *Lawn v. United States*, 355 U.S. 339, 362-363, n. 16; see, e.g., *Duignan v. United States*, 274 U.S. 195, 200; *United States v. Socony-Vacuum Oil Co., Inc.*, 310 U.S. 150, 239. And in applying this rule, the Court has stayed its hand where the issue raised involves a question

concerning the proper admission or exclusion of evidence—the same issue which petitioner seeks to raise here. See, *e.g.*, *Husty v. United States*, 282 U.S. 694, 701–702; *McLoughlin v. Raphael Tuck Co.*, 191 U.S. 267, 271.

We realize, of course, that the Court has power to notice “[p]lain errors or defects affecting substantial rights” although they have not been called to the attention of the court below or even this Court. Rule 52(b), F.R. Crim. P.; Rule 40(1)(d)(2) of the Rules of this Court; see *United Brotherhood of Carpenters v. United States*, 330 U.S. 395, 411–412; *Sibbach v. Wilson, & Co.*, 312 U.S. 1, 16; *Weems v. United States*, 217 U.S. 349, 362. This power, however, is exercised “only in clear cases and in exceptional circumstances” (*Kessler v. Strecker*, 307 U.S. 22, 34), where “the errors are obvious, or * * * seriously affect the fairness, integrity or public reputation of judicial proceedings” (*United States v. Atkinson*, 297 U.S. 157, 160), such as, for example, the admission of evidence obtained in violation of the Fourth and Fifth Amendments, or the use of a confession illegally obtained. See, *e.g.*, *Gambino v. United States*, 275 U.S. 310, 319; *Screws v. United States*, 325 U.S. 91, 107.

No such circumstances are presented here. Except for petitioner’s broad claim (Pet. Br. 33–41) that declarations of third persons outside his presence and knowledge were inadmissible against him; the rulings complained of concern merely the admission of a few items of evidence in a lengthy record which, even putting this evidence aside, estab-

lishes petitioner's guilt of the crime of which he was charged. And the courts of appeals which have had an opportunity to consider the issue of such third-party declarations in similar cases arising under the Smith Act, have unanimously rejected his contention (see cases cited, *infra*, p. 53). Thus, the error, if any, is in no sense an "obvious" one.

Moreover, petitioner does not suggest any mitigating circumstances for his failure to raise the issue of the validity of the trial court's rulings in the court below. He was adequately represented by the same counsel in the trial court and the court of appeals. That counsel obviously felt that petitioner's interests would be better served if reversal of his conviction was sought in the court below on more substantial grounds than the one revived here. The fact that petitioner's present counsel apparently disagrees with his former counsel on this score does not justify ignoring an established policy of this Court.

B. INADMISSIBLE EVIDENCE WAS NOT RECEIVED

Even if petitioner had preserved his objections to the admissibility of evidence by raising the issue in the court of appeals, nevertheless his contentions would have to be rejected as meritless.

1. *The Lautner opinion testimony.* Petitioner complains (Pet. Br. 35-36) that Lautner was permitted to give "prejudicial opinions" which were incompetent, irrelevant, and inflammatory. He cites first (Pet. Br. 35) Lautner's testimony that the dictatorship of the proletariat, especially in a country like the United States, "cannot be achieved peacefully"

but only "by force, challenge and violence" (R. 195). According to petitioner, this testimony was inadmissible because it was allegedly given as his own opinion, not that of the Communist Party or petitioner, and because, in any event, the issue under the statute was not what the Party believed would ultimately be necessary but what it presently advocated.

Lautner was a high-level Party functionary whose membership dated back some twenty years at the time of his break with the Party in 1950. His background, as the record reflects, included attendance throughout this period, as a student and teacher, at some of the Party's highest schools at which it systematically taught the principles of Marxism-Leninism. He also actively participated as a leader in the Party's main programs (see *infra*, pp. 61-62). The bulk of Lautner's testimony (see R. 5-196) was concerned with relating to the court and jury the substance of what he was taught and what he himself as a certified representative of the Party later taught at schools and classes (see *infra*, pp. 62-66, 67-68). Thus, Lautner qualified as an expert who was in a position to know what the Party stood for and how it functioned. R. 194; *United States v. Lightfoot*, 228 F. 2d 861, 867 (C.A. 7), reversed on other grounds, 355 U.S. 2; cf. *United States v. Mesarosh*, 223 F. 2d 449, 455 (C.A. 3), reversed on other grounds, 352 U.S. 1; *Frankfeld v. United States*, 198 F. 2d 679, 689 (C.A. 4), certiorari denied, 344 U.S. 922; *United States v. Dennis*, 183 F. 2d 201, 229 (C.A. 2), affirmed, 341 U.S. 494. Having provided the jury with detailed factual in-

formation upon which his opinion was explicitly based (R. 194), he could properly conclude his testimony by summarizing the Party's teachings and advocacy.

It is clear, of course, as petitioner concedes (Pet. Br. 35), that the nature of the Communist Party, its teachings and objectives, was a material issue in this case. And it is equally clear, particularly when read in context, that Lautner's testimony was directly relevant to this issue. Lautner was describing the objectives of the Communist Party from 1929 to 1950 (R. 195-196)—objectives which the Party was, during that period and afterward, actually attempting to accomplish (see *supra*, pp. 36-38). For example, Lautner stated that one of the conditions necessary before the Party could seize power by violence was leadership "of the decisive sections of the working class" (R. 195); and the record demonstrates that petitioner himself was active in a program to achieve just such leadership (*supra*, pp. 17-20). The fact that the Party did not advocate that violence be used until the future when "the time [is] ripe" (*Yates v. United States*, 354 U.S. at 332), rather than at the present moment, does not render such evidence irrelevant. Just such advocacy of violence when circumstances will permit satisfies the standards laid down in *Yates* (see *supra*, pp. 33-34).

Petitioner also contends (Pet. Br. 36) that it was error to permit Lautner to testify that certain provisions of the Party Constitution were "protective language" and "double talk" (R. 187-193). As we have noted, Lautner's experiences in the Party qualified

him as an expert concerning the Party's teachings and objectives. This experience also qualified him to explain the meaning of terms and passages in the Party's constitution as they were understood by its members and initiates during the period of his membership. As a leading member of the Party for more than twenty years, he was in a position to acquire knowledge of the common understanding of its members and, as a teacher at Party schools, he himself helped to shape their understanding. In a similar situation, in *Dennis*, a former Party leader was allowed to testify in behalf of the government that the Party constitution contained "passages * * * which were innocent upon their face, but which were understood by the initiate to be only a cover—'window dressing'—for the violent methods advocated and taught" (183 F. 2d at 229). In response to a contention that the testimony was inadmissible, Judge Hand stated that "[t]his was so patently competent evidence that it needs no discussion" (*ibid.*). See also *United States v. Mesarosh*, *supra*, 223 F. 2d at 455.

Nor is it true, as petitioner contends (Pet. Br. 36), that Lautner's testimony concerning the experience of the Yugoslav and other Eastern European Communist Parties, after they refused "to bend under Stalin's leadership" (R. 186-187), did not have "the slightest relevance to any issue in this case." The purpose of this testimony was to explain a particular passage from an article appearing in the November 1948 issue of *Political Affairs* (G. Ex. 49), the Party's official theoretical organ (R. 181), which had been previously read to the jury (R. 185-186). In the

article, the writer had stated that "[t]he fight against * * * Browderism must continue * * * [and] become intensified in the light of the * * * struggle * * * waged by all Communists against the anti-Marxist, anti-Leninist, bourgeois nationalist positions of the leaders of the Yugo Slav Communist Party" (G. Ex. 49, p. 1010; R. 186). The record already included evidence showing that when Browder was expelled in 1945 the Party had rejected his "revisionist" policies, which, according to Party leaders, included peaceful coexistence with capitalism and the end of the class struggle (R. 90-105; see *infra*, p. 66). Thus, Lautner's testimony, coupled with the statement in *Political Affairs*, shows that "revisionism"—the rejection of the revolutionary and violent objectives of Marxism-Leninism (called Browderism in the United States, bourgeois nationalism in Eastern Europe)—was still being vigorously opposed three years later in 1948, not only in the United States but throughout most of the Communist world, under the direction of the highest leader in international Communism. As such, the testimony was properly received as an explanation by a qualified expert of a statement made in an official Party document, and was clearly relevant to the Party's teaching and advocacy.

2. *The third-party declarations.* Petitioner next argues (Pet. Br. 37-41) that it was error to admit, as evidence, statements made by other Party members which were not made in his presence and of which he had no knowledge.¹⁶ This evidence was introduced to

¹⁶ This issue is also raised in a similar, although not precisely the same, form in *Scales v. United States*, No. 8, this Term. See our 1958 brief in that case, pp. 113-116.

prove the nature and character of the Communist Party during the period covered by the indictment. One of the elements of the offense defined by the "membership" clause of the Smith Act—the first element to be proved—is that the group or society was, during the pertinent period, one which taught and advocated the forcible overthrow of the Government. Although *knowing* membership must be proved in addition, the first step, legally and logically, must necessarily be proof of the character of the organization. To limit such proof to acts and statements of the particular individual charged with knowing membership in the organization (or done or uttered in his presence) is incorrect. If petitioner's contention that this is required were valid, the nature of the Party, a material issue, could never be proved. For the Party is by definition a group. And the group's character could not be known by examining only the acts and statements of an individual member in isolation; instead, the only way to prove the character of an organization is to adduce evidence of the authoritative acts, statements, and publications of its officers, leaders, and official spokesmen.

Of course, where the individual defendant in a membership case is, as here, a high-ranking officer and leader of the Party, proof of the character of the Party may (and would normally be expected to) include (as it did here, *supra*, pp. 6-26) individual acts and statements of the defendant himself. But there is surely no merit to the argument that it must be *limited* to such individual acts and statements. As the Court of Appeals for the Fourth Circuit noted in

commenting on similar evidence (*Scales v. United States*, 260 F. 2d 21, 29, pending on certiorari, No. 8, this Term):

That part of the evidence which pertained to the activities of the Party with which * * * [the defendant] had no immediate connection was relevant, since it tended to prove the allegations of the indictment that the Communist Party of the United States was a group of persons who taught and advocated the overthrow of the Government of the United States by force and violence.

See also *United States v. Lightfoot*, *supra*, 228 F. 2d at 867; *Scales v. United States*, 227 F. 2d 581, 589-592 (C.A. 4), reversed on other grounds, 355 U.S. 1; cf. *United States v. Mesarosh*, *supra*, 223 F. 2d at 454-455; *Frankfeld v. United States*, *supra*, 198 F. 2d at 689; *United States v. Dennis*, *supra*, 183 F. 2d at 230.

Nor was the government's evidence, as petitioner contends (Pet. Br. 41), "too remote to have relevance." Like the evidence adduced in many of the other prosecutions under the Smith Act, the evidence here "contained links in Party teachings sufficient for the jury to find a continuity of Party purposes and teachings through the 1930's up to the indictment period." *United States v. Mesarosh*, *supra*, 223 F. 2d at 455. The evidence relating to events antedating the enactment of the Smith Act, coupled with proof of the Party's more recent activities, provided the jury with the necessary information to evaluate properly the Party's real objectives and teachings. Moreover, the time factor was an evidentiary matter peculiarly for

the judgment of the trial judge in considering the general problem of relevancy. As the court below observed in *Dennis, supra*, 183 F. 2d at 231:

[I]t is nonsense to say that events occurring before a crime, can have no relevance to the conclusion that the crime was committed; and declarations are no different from any other evidence. How far back of the commission of the crime one may go is a matter of degree, and within the general control of the judge over the relevancy of evidence. * * * The same doctrine applies to evidence occurring before the acts charged had become a crime at all * * *.

See also *United States v. Lightfoot, supra*, 228 F. 2d at 867. The same sound basis for sustaining the trial court's discretionary ruling exists here.

III

SECTION 4(f) OF THE INTERNAL SECURITY ACT OF 1950 DOES NOT BAR PROSECUTION UNDER THE MEMBERSHIP CLAUSE OF THE SMITH ACT

Petitioner contends (Pet. Br. 42-51) that Section 4(f) of the Internal Security Act of 1950 (50 U.S.C. 783(f)) was intended to immunize Communists from prosecution under the membership clause of the Smith Act. This identical point was raised in *Scales v. United States*, No. 8, this Term, and is discussed in both our original 1958 brief, pp. 68-74, and in our 1959 brief on reargument, pp. 33-36, in that case. We respectfully refer the Court to that material.

IV

THE MEMBERSHIP CLAUSE OF THE SMITH ACT IS CONSTITUTIONAL ON ITS FACE AND AS APPLIED TO THE FACTS OF THIS CASE

A. VALIDITY OF THE CLAUSE ON ITS FACE

In our 1958 brief in *Scales*, pp. 38-56, we undertook to show that, on the basis of the principles enunciated by this Court in *Dennis v. United States*, 341 U.S. 494, and reaffirmed in *Yates v. United States*, 354 U.S. 298, the membership provision of the Smith Act is valid on its face. In our brief following this Court's order of June 29, 1959, 360 U.S. 924, setting *Scales* for reargument and requesting counsel to address themselves to specified questions, we discussed (pp. 5-33) various additional aspects of this issue. We respectfully refer the Court to the discussion in those briefs in answer to petitioner's arguments (Pet. Br. 52-65, 69, 85) attacking the constitutionality of the clause on its face.

B. VALIDITY OF THE STATUTE AS APPLIED IN THIS CASE

Petitioner contends that the membership clause is unconstitutional as applied in this case (Pet. Br. 65-69, 83) because the government failed to prove, as to the indictment period, first, that petitioner was an active member of the Party (Pet. Br. 83) or that the Party advocated violence (Pet. Br. 66); and, second, that any of petitioner's or the Party's activities constituted a significant danger (Pet. Br. 65-66). We submit, however, that if, as we have urged, the membership provision is generally valid, there can be little doubt

that it could be and was constitutionally applied in this case.

Earlier in this brief, in discussing the requirements of the *Yates* case (pp. 36-38), we showed that the record sustained the jury's finding that the Party, prior to the limitation period, was not only advocating violent revolution, but was taking concrete action toward forcefully overthrowing the Government as speedily as circumstances would permit. Thus, the Party was implementing its industrial concentration program and establishing an underground apparatus, both of which were initial steps in carrying out its illegal revolutionary aims. Similarly, we have shown (pp. 42-44) that petitioner understood, supported, and intended the achievement of the Party's ends; that he was no mere innocent or trivial underling, but a leader in the industrial concentration program and in both the overt and underground organizations with control over a significant area; and that he engaged aggressively in the Party activities his active membership and leadership entailed. In sum, as the court below stated (R. 448; 262 F. 2d at 508), petitioner "was shown to be a leader steeped in Party discipline and dedicated to its objectives."

As we noted before (pp. 39-41), it is a natural and reasonable inference that both the Party's advocacy of violent action and petitioner's activity—which were proved to have existed for a number of years up to the eve of the limitation period—continued throughout that period in the absence of any substantial evidence to the contrary. Moreover, petitioner's own statements and conduct after Sep-

tember 1, 1951, and within the period not barred by limitations, show that petitioner continued to participate actively in that Party program—its underground apparatus—which clearly demonstrates that the Party continued to advocate violent and illegal action. Petitioner, having been previously selected to enter the underground as one of the Party's elite ten percent of highly devoted and disciplined members, was operating in disguise during the limitations period while awaiting instructions from his superiors. Later in the limitations period, apparently on orders, he moved to another city and took employment in a basic industry, in disguise and under a false name, presumably in the interests and under orders of the Party.

It is, of course, true that neither petitioner nor the Party as a whole had power at that time to overthrow the Government by force. But it was no less clear in *Dennis* that the Party, without the events which were anticipated, lacked such power currently or for at least the near future. Thus, *Dennis* teaches that Congress may act against "an attempt to overthrow the Government by force, even though doomed from the outset because of inadequate numbers or power of the revolutionists * * *." 341 U.S. at 509. The power which entitled Congress to act against a conspiracy to organize the Party is at least equally available to strike against the Party-in-being in the only way the Party can function and be reached—through its members. The fact that each member in isolation, even a leading member, may seem insignificant cannot bar Congress from dealing with the "ingredients

of the reaction * * *." *Dennis*, 341 U.S. at 511. Just as the nation's commerce may be protected by dealing with individual instances which taken alone lack consequence (e.g., *Polish National Alliance v. National Labor Relations Board*, 322 U.S. 643, 647-648), the Communist Party's threat to the national security may be reached through the members who comprise it, at least where those members have the active purpose to help the Party achieve its unlawful objectives. Such members may be the leaders who undertake to launch violent action when "the circumstances permit", or the indoctrinated followers who will readily and enthusiastically answer the call (*Dennis*, 341 U.S. at 509, 511). Petitioner was a "rigidly disciplined" member and leader of the conspiratorial group, ready to plan and carry out the Party's unlawful objectives."

Petitioner further claims (Pet. Br. 66-69) that this Court in *Dennis* found a clear and present danger only because of the tense international situation at the time, and that this situation no longer exists. This contention is obviously without substance. The period here

¹⁷ In this case, the trial court did not make any explicit charge to the jury concerning the factor of "activity" (as was done in *Scales*). For our views on that factor, see our 1959 brief on reargument in *Scales*, pp. 21-28. As applied to the present case, our position is that that factor was comprehended within the term "membership" in the indictment and charge, and was proved by the evidence; and if "activity" is viewed as an overriding constitutional standard (like "clear and present danger"), it existed here.

in question (September 1951–November 1954)¹⁸ began just after the outbreak of fighting in Korea. During most of this period, the United States was engaged in armed combat against Communist North Korea and forces from Communist China. It scarcely requires argument that that period was not constitutionally less fraught with clear and present danger than was the time from 1945 to 1948 considered by this Court in *Dennis* in 1951. Petitioner's contrary view was shortly and sufficiently answered in *United States v. Flynn*, 216 F. 2d 354, 367 (C.A. 2), certiorari denied, 348 U.S. 909, where the court said that "if the danger was clear and present in 1948, it can hardly be thought to have been less in 1951, when the Korean conflict was raging and our relations with the Communist world had moved from cold to hot war." See also *United States v. Lightfoot*, 228 F. 2d 861, 870 (C.A. 7), reversed on other grounds, 355 U.S. 2; *Scales v. United States*, 260 F. 2d 21, 37 (C.A. 4), pending on certiorari, No. 8, this Term.

¹⁸ Even if petitioner were correct in assuming that the Communist Party is no longer a clear and present danger in view of the present international situation, this is immaterial. It is enough that the Party posed a clear and present danger during the indictment period and, more particularly, that portion of the indictment period within the statute of limitations.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the judgment of the court of appeals should be affirmed.

J. LEE RANKIN,
Solicitor General.

J. WALTER YEAGLEY,
Assistant Attorney General.

KEVIN T. MARONEY,
ANTHONY A. AMBROSIO,
Attorneys.

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APPENDIX

SUMMARY OF THE EVIDENCE (NOT SPECIFICALLY LINKED TO PETITIONER) THAT THE COMMUNIST PARTY WAS DURING THE INDICTMENT PERIOD AN ORGANIZATION WHICH TAUGHT AND ADVOCATED THE FORCIBLE OVERTHROW OF THE GOVERNMENT OF THE UNITED STATES AS SPEEDILY AS CIRCUMSTANCES WOULD PERMIT

A large part of the evidence relating to the character of the Communist Party during the indictment period which did not relate directly to petitioner was introduced through the testimony of prosecution witness John Lautner (R. 5-196, 202-206; G. Exs. 8-63). Lautner was one of the leading members of the Communist Party at the national level prior to 1950. Expelled from the Party in that year (R. 175), he was, at the time, a member of the National Review Commission, the Party's top security body, as well as the Chairman of the New York State Review Commission (R. 6, 22).

Lautner first joined the Communist Party in 1929 (R. 5). Throughout the period of his membership he attended many of the Party's National Conventions including those held in 1936, 1938, 1940, 1945, and 1948 (R. 26). In 1930 he was a pupil at the Party's National Training School in New York, together with some twenty other students (R. 8-9, 26-27). Later, in 1941, he again attended this National Training School, described as the "highest" conducted under Party auspices, together with six other Party leaders (R. 19-20, 21, 68-71). Lautner himself was a teacher at various Party schools and classes from 1933 to 1936 (R. 47, 48, 61), and from 1946 to 1948 (R. 28-29,

63-66, 72, 122-123, 127-129, 135-138, 140-144, 155-156).

Lautner testified that, based upon his twenty years' experience in the Communist Party as a student and teacher at Party schools, as a national leader of the Party, and as a participant at many of its meetings and national conventions, it was his opinion that the ultimate aim and objective of the Communist Party of the United States was "to destroy capitalism, monopoly capitalism, materialism" when "two sets of conditions" historically coincided (R. 194-195). These conditions, known as "objective" and "subjective" conditions were explained by Lautner as follows (R. 195):

Objective conditions on one hand are if there is a crisis, economic crisis or a war, a situation where the Government is not able to exert its opinion and function with the established accepted methods, when sections of the population are dissatisfied with the existing conditions. In this crisis there is a wide dissatisfaction. These are one set of conditions. On the other hand, if paralleled with this situation [the] following subjective conditions are present. 1, that the Communist Party is the vanguard, the leader of the decisive sections of the working class. In addition to that, the Communist Party has influence over wide sections of the so-called allies of the working class, like poor farmers, negro people. In addition to that when the Communist Party succeeded in neutralizing sections of the population amongst the lower middle classes, when these two conditions exist, on one hand objective and the subjective conditions, the Communist Party is ready to challenge and aims to destroy capitalism, mo-

nopoly capitalism, and achieve its final objective, establishment of socialism through the dictatorship of the proletariat.

Lautner further testified, based upon his Party experiences, that (except for a brief period from 1944 to 1945) the Party advocated that this change to socialism and the establishment of the dictatorship of the proletariat "particularly in a highly developed country like the United States, cannot be achieved peaceful[ly]" but only by "force, challenge and violence" (R. 195, 195-196).

These conclusions were based on Lautner's knowledge of the systematic instruction at Party schools and classes throughout the period of his membership. Thus, Lautner testified that the substance of the following passages from so-called Marxist-Leninist "classics" were taught in the 1941 National Training School and in the classes which he himself later taught from 1946 to 1948:

Problems of Leninism (G. Ex. 14, R. 63):

Can such a radical transformation of the old bourgeois system of society be achieved without a violent revolution, without the dictatorship of the proletariat? Obviously not. To think that such a revolution can be carried out peacefully within the framework of bourgeois democracy, which is adopted to the domination of the bourgeoisie, means one of two things. It means either madness, and the loss of normal human understanding, or else an open and gross repudiation of the proletarian revolution. [*Id.*, pp. 19-20; R. 135-136, 137.]

* * * * *

The scientific concept, dictatorship, means nothing more nor less than power which directly rests on violence which is not limited by

any laws or restricted by any absolute rules. Dictatorship means, note this once and for all, Messrs. Cadets, unlimited power, resting on violence and not on law. During civil war, victorious power can only be dictatorship. [*Id.*, p. 25; R. 137, 137-138.]

History of the Communist Party, Soviet Union (Bolsheviks) (G. Ex. 20; R. 66):

Marx and Engels taught that it was impossible to get rid of the power of capital and to convert capitalist property into public property by peaceful means, and that the working class could achieve this only by revolutionary violence against the bourgeoisie, by a proletarian revolution, by establishing its own political rule, the dictatorship of the proletariat, which must crush the resistance of the exploiters and create a new classless, Communist society. [*Id.*, p. 9; R. 129.]

* * * * *

The Marxist-Leninist Theory is not a dogma, but a guide to action. [*Id.*, p. 356; R. 129.]

State and Revolution (G. Ex. 15, R. 63):

Have these gentlemen ever seen a revolution? Revolution is undoubtedly the most authoritative thing possible. It is an act in which one section of the population imposes its will on the other by means of rifles, bayonets, cannon, i.e., by highly authoritative means, and the victorious party is inevitably forced to maintain its supremacy by means of that fear which its arms inspire in the reactionary. [*Id.*, p. 53; R. 142, 141-142.]

Foundations of Leninism (G. Ex. 13, R. 63):

* * * The strategy and tactics of Leninism constitute the science of leadership of the rev-

lutionary struggle of the proletariat. [*Id.*, p. 89; R. 132, 132-133.]

What is the difference between revolutionary tactics and reformist tactics?

To a reformist, reforms are everything, while revolutionary work is something incidental, something just to talk about, mere eyewash. That is why, with reformist tactics under the bourgeois regime, reforms are inevitably transformed into an instrument for strengthening that regime, an instrument for disintegrating the revolution.

To a revolutionary, on the contrary, the main thing is revolutionary work and not reforms; to him reforms are by-products of the revolution. That is why, with revolutionary tactics under the bourgeois regime, reforms are naturally transformed into instruments for disintegrating this regime, into instruments for strengthening the revolution, into a base for the further development of the revolutionary movement.

The revolutionary will accept a reform in order to use it as an aid in combining legal work with illegal work, to intensify under its cover, the illegal work for the revolutionary preparation of the masses for the overthrow of the bourgeoisie. [*Id.*, p. 103; R. 133-134, 135.]

In the 1930 and 1941 National Training Schools, in the classes which Lautner taught in the late 1940's, and in Party publications, Party instructors and leaders continuously emphasized that Marxist-Leninist principles applied to the United States, and

they condemned so-called "American Exceptionalism"—the doctrine that the United States is exempt from the basic laws of Marxism-Leninism and that it is possible that the transition to socialism in this country may be accomplished peacefully (R. 31-32; 130-132, 141-142; G. Exs. 34, 37, R. 110, 114-115).

In 1944 the Communist Party was reorganized as the Communist Political Association (R. 87). In July 1945, however, an emergency national convention reconstituted the Communist Party (R. 93). This action was taken following severe criticism throughout the Party of the "revisionist"¹ policies of its then General Secretary, Earl Browder (G. Exs. 26, 27, 29; R. 88-93, 97-98). The convention passed a resolution² (R. 94-96, 99-100) which, after noting that Browder's errors had led to the "false concept of social evolution" and "to revision of the fundamental laws of the class struggle" (G. Ex. 27, p. 96; R. 95), resolved "to overcome quickly our errors and mistakes" by "enhancing the Marxist understanding of our entire organization and leadership" (G. Ex. 27, p. 99; R. 96).

Reports made to the convention by national leaders William Z. Foster and John Williamson emphasized the need to reorganize the Party, to re-educate the members and leadership in the principles of Marxism-Leninism, and to establish "firm roots in the working class" (G. Ex. 27; R. 101-105). Following the Convention, the Party embarked upon a "three-pronged"

¹ Revisionism was defined by Lautner as "an effort to revise the basic concept of Marxism-Leninism" (R. 88).

² The resolution was published in *Struggle Against Revisionism* (G. Ex. 27; R. 90) and the September 1945 issue of *Political Affairs* (G. Ex. 30; R. 100), the Party's official theoretical organ (R. 97), both of which contain the basic documents of the convention (R. 100).

national program of reorganization, re-education, and concentration of activities in the basic industries (R. 105-122; G. Exs. 31-39).

Lautner participated in all three phases of this program (R. 105). In 1946 he was assigned by top leaders of the New York State Party organization the task of reorganizing the State Party into industrial sections (R. 120-121). During the same period, he was assigned to the Chelsea "concentration" region in Manhattan, which encompassed a large part of the New York City waterfront, to try to build up Party membership in the transport industry in accordance with the main concentration task given to the state organization by the national leadership (R. 121).

From 1946 through 1948, Lautner taught classes in Party schools in New York City (R. 122-213, 63). Among the courses he taught were "Marxism-Leninism", "Political Economy", "Party Organization", "Party Structure" and "Democratic Centralization [sic] and Discipline" (R. 121). Copies of an outline issued by the Party's National Educational Commission entitled *Outline on Fundamentals of Marxism* (G. Ex. 40) were given to him to use as a guide in teaching these courses (R. 125-127). This *Outline* divided the subject of Marxism-Leninism into nine "Lessons," suggesting the material to be covered in each lesson and the Marxist-Leninist "classics" or selections therefrom to be read and studied in connection with the lessons. In teaching the courses, Lautner used many of the texts which the *Outline* designates as reading assignments, including *Foundations of Lenin-*

* Most of the passages from the "classics" which we have previously set forth (*supra*, pp. 63-65), are included within the reading assignments under one or more of the "Lessons" in the *Outline* (see G. Ex. 40).

ism (G. Ex. 13), *Problems of Leninism* (G. Ex. 14), *State and Revolution* (G. Ex. 15), and *History of the Communist Party, Soviet Union (Bolsheviks)* (G. Ex. 20) (R. 127-128).

At the 1948 national convention, conducted under strict security regulations (R. 151-152), the Party again repudiated the "revisionism" of Browder and reaffirmed the action taken at the 1945 convention in reconstituting itself on a Marxist-Leninist basis (R. 153). After the convention, the Party began nationally to organize ten per cent of its membership in an underground apparatus parallel with the existing Party structure (R. 164-166). Witness Lautner was assigned the task of building in New York this underground organization of about 3,000 members (R. 164). The system utilized was modeled after similar ones which had been used previously by European Communist parties (R. 165-166). The basic structure was a pyramid consisting of seven levels, each level from the top down containing a larger number of three-member groups, each three-member group connected to a single member of a three member-group at a higher level. As a result of this system each Party member knew only the two other members in his group, a single member from a higher level and three other members at a lower level (R. 166-168). In addition, the system had "horizontal aspects" (R. 164) which included a communication system consisting of printing presses and "drop places" for leaving messages as well as hiding places for Party leaders (R. 164-165). Before Lautner was expelled in 1950, the Party had been successful in building the underground apparatus in New York all the way down to the seventh level (R. 170) and was manufacturing its own mimeograph machines to supply this system (R. 172-173).

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960

No. 9

JOHN FRANCIS NOTO,

Petitioner,

vs.

UNITED STATES OF AMERICA.

WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

REPLY BRIEF FOR PETITIONER

JOHN J. ABT,

320 Broadway,

New York 7, N. Y.,

Attorney for Petitioner.

INDEX

SUBJECT INDEX

	PAGE
REPLY BRIEF FOR PETITIONER	
1. The insufficiency of the evidence	1
A. The advocacy of the Communist Party	2
B. The knowledge and intent of petitioner	5
2. The erroneous admission of prejudicial evidence	6
3. The unconstitutionality of the statute	11
A. Face invalidity	11
B. Application	12

CITATIONS

CASES:

<i>American Communications Association v. Douds</i> , 339 U.S. 382	13
<i>Chastleton Corp. v. Sinclair</i> , 264 U.S. 543	15
<i>Dennis v. United States</i> , 341 U.S. 494	14
<i>Drignan v. United States</i> , 274 U.S. 195	7
<i>Frankfeld v. United States</i> , 198 F. 2d 679	7
<i>Gambino v. United States</i> , 275 U.S. 310	6
<i>Husty v. United States</i> , 282 U.S. 694	7
<i>Ingam v. United States</i> , 360 U.S. 672	3
<i>Kessler v. Strecker</i> , 307 U.S. 22	6
<i>Lawn v. United States</i> , 355 U.S. 339	6
<i>Maisenberg v. United States</i> , 356 U.S. 670	5
<i>McLoughlin v. Raphael Tuck Co.</i> , 191 U.S. 267	6
<i>Nowak v. United States</i> , 356 U.S. 660	5
<i>Scales v. United States</i> , 227 F. 2d 581	7, 8
<i>Scales v. United States</i> , 260 F. 2d 21	7, 8
<i>Schneiderman v. United States</i> , 320 U.S. 118	5
<i>Screws v. United States</i> , 325 U.S. 91	6
<i>Sibbach v. Wilson & Co.</i> , 312 U.S. 1	6

<i>United Brotherhood of Carpenters v. United States</i> , 330 U.S. 395	6
<i>United States v. Atkinson</i> , 297 U.S. 157	6
<i>United States v. Dennis</i> , 183 F. 2d 201	7, 10
<i>United States v. Flynn</i> , 216 F. 2d 354	14
<i>United States v. Jackson</i> , 257 F. 2d 830	2
<i>United States v. Lightfoot</i> , 228 F. 2d 861	7
<i>United States v. Mesarosh</i> , 223 F. 2d 449	7
<i>United States v. Silverman</i> , 248 F. 2d 671	2, 3
<i>United States v. Socony-Vacuum Oil Co., Inc.</i> , 310 U.S. 150	6
<i>Weems v. United States</i> , 217 U.S. 349	6
<i>Yates v. United States</i> , 354 U.S. 298	1, 2, 3, 4, 5

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REPLY BRIEF FOR PETITIONER

1. THE INSUFFICIENCY OF THE EVIDENCE.

The respondent acknowledges (Br. 36, n. 11) that the incitement-to-action standard of *Yates v. United States*, 354 U.S. 298, is applicable to the advocacy of the organization in a prosecution under the membership clause.¹ Accordingly, it is not disputed that the prosecution was required to prove that, within the statutory period, the Communist Party, to the knowledge of petitioner, advocated action for future forcible overthrow.

¹ Contrary to respondent's contention (Br. 41-42, n. 15), it is clear that the court below held otherwise. This appears both from the explicit statement that the *Yates* test is "inapplicable" (R. 449) and from the failure of the court to mention or apply the test in delineating the issues and discussing the sufficiency of the evidence (R. 439-42, and see Pet. Br. 29-30).

A. *The Advocacy of the Communist Party.*

Our principal brief demonstrated (pp. 28-30) that the evidence of Party advocacy in this case differed in no material respect from that which *Yates* (at 329) held "strikingly deficient" and which the Second Circuit found insufficient in *United States v. Silverman*, 248 F. 2d 671, and *United States v. Jackson*, 257 F. 2d 830. We also showed (pp. 26-27) that the Government's action in procuring the dismissal of all but one of the nine Smith Act conspiracy cases which survived appellate review was an acknowledgment of its inability to supply the deficiency in the *Yates*, *Silverman* and *Jackson* records.

Respondent ignores the *Silverman* and *Jackson* decisions and its own action in the other conspiracy cases. It acknowledges (Br. 39, n. 12) that "the general pattern of the evidence in this case is similar to that in *Yates*." But in the same sentence, it asserts that the factual pattern in this case is "unique."

Respondent does not and cannot claim that there was anything unique in the testimony of Lautner, its principal witness on Party advocacy in this case as he was in *Yates*, *Silverman*, *Jackson* and every other Smith Act trial since *Dennis*. According to respondent (*ibid.*) the uniqueness of the present record resides in the testimony of five witnesses (Dietch, Hicks, Chatley, Regan and Greenberg) who did not appear in *Yates*. Respondent says that the "significant aspects" of this testimony relate to "industrial concentration and underground activities." There is nothing "unique" about the testimony of the five witnesses on these subjects. As respondent's own summary of the evidence shows, this testimony was merely cumulative of Lautner's. Cf. G. Br. 17-26 with Appdx. to G. Br. 66-68. Moreover, the witnesses added nothing to the evidence on "concentration" and the "underground" with which the *Yates* record was

replete. See Pet. Br. 29.² Similar evidence was likewise introduced in *United States v. Silverman, supra*, which disposed of respondent's present contentions as follows (at 685, n. 5):

"The prosecution stresses the proof of industrial concentration and of concealment. But these do not rationally raise any inference that the appellants engaged in a plot to advocate insurrection at the time they were hiding and seeking factory jobs. The industrial concentration possibly suggests a conspiracy to commit sabotage, espionage or political strikes going beyond mere labor proselytizing; but it does not point very directly toward illegal exhortation. Similarly, concealment is consistent with any unpopular or illegal enterprise; but the jury could not tell the nature of the enterprise from the mere fact of concealment."

See also, *Ingram v. United States*, 360 U.S. 672, 679-80 and Pet. Br. 32-33.

Our principal brief demonstrated that a reversal would be required even if the evidence as to Party advocacy prior

² *Yates* (at 331-32) did find that one item of evidence concerning the underground which was introduced in that case and directly connected with certain defendants might, if given "its utmost sweep," support a finding that forcible action was engaged in, not by the Party as such, but within a "particularly trustworthy group." This finding was based on the testimony of Scarletto that he had been surreptitiously taught methods of "moving masses of people in time of crisis." However, *Yates* held (at 329-30, 332), that this testimony did not supply the deficiency in the evidence concerning the advocacy of the Party as such. And see *United States v. Silverman, supra*, at 686-87. Moreover, there is no evidence in the present case of the kind introduced through Scarletto. Finally, the Government itself did not consider the Scarletto testimony sufficient to warrant a conspiracy conviction of the *Yates* defendants directly involved. For it dismissed the indictments against them after the Court remanded their cases for a new trial. Respondent's reliance on this aspect of the *Yates* decision (G. Br. 38-39) is therefor completely misplaced.

to September 1, 1951 could somehow be held to meet the *Yates* standard. For the only evidence of Party advocacy subsequent to that date and within the period not barred by the statute of limitations was offered by petitioner and establishes that the advocacy was peaceable. (Pet. Br. 30-31.)

Respondent does not and cannot cite any evidence of Party advocacy of forcible overthrow, even as a matter of abstract doctrine, within the limitations period.³ Nor does it deny that the evidence introduced by petitioner showed that, within this period, the Party advocated a peaceful path to socialism.

Respondent (Br. 39-40), like the court below, invokes an inference that the Party's "character remained unchanged through the limitations period, in the absence of any evidence to the contrary." But the relevant issue is not the general "character" of the Party in the limitations period. What the statute requires is proof that, within this period, the Party performed certain verbal acts—i.e., utterances or publications of incitements to forcible overthrow.⁴ The so-called presumption of continuance, however, applies only where "the existence of an object, condition, quality, or tendency at a given time is in issue." 2 Wigmore, Evidence (3d ed.), sec. 437. The presumption does not and cannot logically have application where the performance of an act at a given time is in issue. It would be nonsensical, for example, to contend that because an accused robbed a certain bank on three occasions in 1957, 1958 and 1959, he

³ Typically, respondent says (G. Br. 40, n. 13) that "the record contains fewer direct references to the Party's advocacy of action in the limitations period than before." In fact, the record contains no such references, direct or indirect, and respondent cites none.

⁴ A single such act would be insufficient since it is only "the systematic teaching and advocacy of illegal action which is condemned by the statute." *Yates v. United States*, *supra*, at 331.

will be presumed to have robbed the same bank in 1960. It is equally nonsensical for respondent to argue that because, as it asserts, the Party advocated forcible overthrow on occasions prior to September 1, 1951, the jury was entitled to infer that the Party engaged in such advocacy on later occasions.

Furthermore, as shown in our principal brief (p. 31), a presumption of continuance, if otherwise permissible, was rebutted by petitioner's evidence of the Party's peaceable advocacy in the limitations period. Respondent argues (Br. 40-41) that the jury was entitled to find this advocacy insincere. But there was not a scintilla of evidence that Foster, the Party chairman, did not mean exactly what he wrote. In any event, it is not hypocrisy, but illegal advocacy that the prosecution must prove.

B. The Knowledge and Intent of Petitioner.

Our principal brief demonstrated (pp. 31-34) that, even assuming proof of illegal advocacy by the Party, the evidence concerning petitioner's knowledge and intent was palpably insufficient under *Nowak v. United States*, 356 U.S. 660; *Maisenberg v. United States*, 356 U.S. 670, and *Schneiderman v. United States*, 320 U.S. 118. Respondent studiously avoids mentioning these decisions. But its own analysis of the evidence (G. Br. 42-43) confirms our contention.

Respondent's failure to face up to the holdings in *Yates*, *Nowak*, *Maisenberg*, or *Schneiderman*, reveals its awareness that they are dispositive of the evidentiary issues. Candor would have compelled it to acknowledge as much and frankly to urge the Court to overrule these cases. Evidently respondent eschewed that course because it can advance no valid reasons for a departure from the Court's previous decisions. On respondent's own showing, there-

fore, a reversal is required. And for the reasons stated in our principal brief (p. 34) the Court should direct a judgment of acquittal.

2. THE ERRONEOUS ADMISSION OF PREJUDICIAL EVIDENCE.

A. In granting certiorari in this case, the Court undertook to review as question 3 "[w]hether the conviction was based on incompetent, irrelevant, remote and prejudicial evidence." See Pet. Br. 2. Nevertheless, respondent argues (Br. 45-46) that the Court should not consider this question because petitioner's timely trial court objections to the evidence were not pursued in the court below. Respondent advanced the same contention in opposing certiorari as to question 3. See Memorandum for the United States, No. 564 Misc., Oct. Term, 1958, pp. 4-5. The Court must therefore have rejected the contention when it included question 3 in the writ. This action accords with the decisions cited by respondent (Br. 45-46) that in a criminal case the Court will notice an error, not raised on appeal, if it affects the fairness of the trial.⁵ Obviously, consideration of question

⁵ Respondent's discussion of the circumstances under which the Court will refuse to notice errors not raised below (G. Br. 45-46) cites twelve decisions. In five of these, the Court ordered reversals for errors, which, in some instances, had not even been raised in the trial court. *Screws v. United States*, 325 U. S. 91, 107; *Sibbach v. Wilson & Co.*, 312 U. S. 1, 16; *Gambino v. United States*, 275 U. S. 310, 319; *United Brotherhood of Carpenters v. United States*, 330 U. S. 395, 411-12; *Weems v. United States*, 217 U. S. 349, 362. In five of the remaining seven cases, the claim of error was not noticed because of circumstances other than or in addition to the failure to raise the question in the Court of Appeals. In two of these, the question was not presented in the petition for certiorari. *Lawn v. United States*, 355 U. S. 339; *Kessler v. Strecker*, 307 U. S. 22, 34. In one, the claim of error was found to be "without merit." *McLoughlin v. Raphael Tuck Co.*, 191 U. S. 267, 271. In two, the error was not raised in the trial court and in one of these the error was also found to be harmless. *United States v. Atkinson*, 297 U. S. 157, 160; *United States v. Socony Vacuum Oil Co., Inc.*, 310 U. S. 150, 239. Although the two remaining decisions were rested

3 is required to determine whether the admission of the evidence to which petitioner objects was erroneous and, if so, whether the errors resulted in the denial of a fair trial.

B. Our principal brief (pp. 35-39) demonstrated that petitioner's conviction was obtained primarily on evidence of third party acts and declarations outside of his knowledge, passages from books and articles which he had not read, and the opinions of an "expert" which he was not shown to have shared. Respondent's summary of Lautner's testimony (Appdx. to G. Br. 61-68), euphemistically designated as "evidence not specifically linked to petitioner," further documents our demonstration.

As we also showed (Pet. Br. 39-41), this evidence was incompetent and irrelevant. Accordingly, its admission denied petitioner a fair trial.

Respondent (Br. 52-53) dismisses our argument as without merit, citing *United States v. Dennis*, 183 F. 2d 201; *United States v. Mesarosh*, 223 F. 2d 449, rev'd on other grounds, 352 U.S. 1; *Frankfeld v. United States*, 198 F. 2d 679; *Scales v. United States*, 227 F. 2d 581, rev'd on other grounds, 355 U.S. 1; *Scales v. United States*, 260 F. 2d 21; *United States v. Lightfoot*, 228 F. 2d 861, rev'd on other grounds, 355 U.S. 2.

Dennis, *Mesarosh* and *Frankfeld* sustained the admission of third party declarations under the co-conspirator rule in cases where the indictment charged a conspiracy and where appropriate instructions on the application of the rule were given. The first *Scales* case held the co-

solely on the failure to raise a claim of error in the Court of Appeals, the claims were minor or frivolous. *Husty v. United States*, 282 U. S. 694, 701-02; *Duignan v. United States*, 274 U. S. 195, 200.

conspirator rule applicable in a membership case, stating (at 592) that "a charge under the membership clause of the Smith Act is a charge of conspiracy." * This holding is erroneous. For as shown in our principal brief (p. 39), the co-conspirator rule is inapplicable where the indictment does not allege a conspiracy and where the accused is not afforded the protection of the instructions required in conspiracy cases. Furthermore, as respondent asserts when defending the sufficiency of the evidence (G. Br. 36, n. 11), indictments under the membership clause do not require proof that the accused "personally conspired to engage in the forbidden advocacy." Thus, respondent itself disputes the proposition on which the *Scales* decision was based—i.e., that an indictment under the membership clause "is a charge of conspiracy."

Respondent says (Br. 52) that if the character of the Communist Party can be established only by evidence of matters within the knowledge of the accused, "the nature of the Party, a material issue, could never be proved." This is so, according to respondent (*ibid.*), because "the Party is by definition a group [a]nd the group's character could not be shown by examining only the acts and statements of an individual member in isolation."

This argument involves respondent in a fatal contradiction. On the one hand, respondent has always conceded that the membership clause does and, constitutionally, must require proof that the petitioner had knowledge that the Communist Party was engaged in proscribed advocacy. Further, respondent insists that it proved guilty knowledge in the only way that knowledge can be proved—by evidence of "petitioner's words, deeds, and history" (G. Br. 44). On the other hand, as we have just seen, respondent asserts

* The second *Scales* decision (at 39, and see at 26) relied on the holding on this point in the prior case.

that the character of the Party's advocacy cannot be proved "by the acts and statements of an individual member." But if that is true, it can never be shown that petitioner had guilty knowledge. Thus, respondent argues that an element of the offense which it agrees must be proved and claims has been proved is impossible of proof. This is schizophrenic thinking.

C. Respondent's defense of the admissibility of Lautner's opinion testimony on the crucial question of force and violence is based on a gross mis-statement of the record. Respondent says that Lautner testified that "the Party advocated that this change to socialism and the establishment of the dictatorship of the proletariat 'particularly in a highly developed country like the United States cannot be achieved peaceful[ly]' but only by 'force, challenge and violence'" (G. Br. 63).

The pertinent passage from Lautner's testimony appears at R. 194-95. The witness first testified that the "ultimate aim of the Communist Party" is "to destroy capitalism, monopoly capitalism, and achieve its final objective, establishment of socialism through the dictatorship of the proletariat." Up to that point, Lautner had said nothing about force and violence. Thereupon, the following occurred (R. 195):

"Q. In that final stage what will the Party resort to with respect to force and violence?"

"Mr. McDonough: I object to it, if the Court please, on the ground it is speculative.

"The Court: I want it clear. You are asking for his opinion.

"Mr. Henderson: That is correct.

"A. This change, and the establishment of the dictatorship of the proletariat, particularly in a highly de-

veloped country like the United States, cannot be achieved peaceful. It will be achieved by force, challenge and violence. . . ."

Contrary to respondent's assertion, therefore, Lautner did not testify that the Communist Party advocated forcible overthrow. Nor did he even testify that the Communist Party contemplated that resort to force would ultimately be required. All that the witness did was to vouchsafe his own personal opinion that socialism cannot be achieved in this country by peaceful means. For the reasons stated in our principal brief (p. 35) this opinion patently inadmissible.

Respondent defends the admission of Lautner's testimony that certain provisions of the constitution of the Party were "double talk" on the ground that the witness "was in a position to acquire knowledge of the common understanding of its members" (G. Br. 50). However, as our principal brief pointed out (p. 36, n. 22), Lautner did not testify as to the understanding of Party members but limited his answer to "initiates" whom he did not define. Respondent relies (Br. 50) on *United States v. Dennis*, 183 F. 2d 201, 229. We think the holding there erroneous. In any event, it is inapplicable. The reasoning of the court was that since a statement by a conspirator as to his understanding of Communist terminology would have been relevant to the mutual understanding of the conspirators and competent against all of them, the conclusion of a witness, drawn from such statements, was likewise admissible. Accordingly, the decision was based on the co-conspirator rule which, as we have shown, has no application to a prosecution under the membership clause.⁷

⁷ That the ruling was based on conspiracy law is apparent from the form of the question put to the witness as well as from the decision. After reading a provision of the Party constitution, the

Our principal brief (p. 36) showed that Lautner's inflammatory testimony about the executions of Eastern European Communist leaders was patently incompetent and irrelevant. Respondent argues (Br. 50-51) that the testimony was properly received to "explain" a reference in an article in *Political Affairs* to the "ideological and political struggle"⁸ against the position of the Yugo Slav Party. However, there is no evidence that petitioner was aware of the existence of the article,⁹ much less that he knew of or agreed with Lautner's "explanation" or shared the witness' lurid appraisal of events in Eastern Europe. Moreover, Lautner was not asked about and did not testify to the Party's understanding of the reference in the article to the Yugo Slav matter, and there is not the slightest basis in the record for attributing the personal opinion of this embittered renegade from Communism to Party members or leaders, let alone to petitioner. Finally, nothing in Lautner's testimony indicates that, even in his opinion, the controversy with the Yugo Slav Party was related in any way to advocacy of the forcible overthrow of capitalist governments.

3. THE UNCONSTITUTIONALITY OF THE STATUTE.

A. Face Invalidity.

Respondent (Br. 55) rests on its briefs in *Scales* for a defense of the constitutionality of the membership clause on its face. Hence it does not discuss our contention (Pet.

witness was asked: "What did you in connection with the other Communists [including a number of the defendants] that you were working with there [at the convention which adopted the constitution] understand that to mean." See the printed record in *Dennis*, p. 3635.

⁸ Respondent deletes the italicized words from its quotation from the article (G. Br. 31, R. 186).

⁹ The sole foundation for its receipt in evidence was the fact that it had appeared in an official Party publication (R. 181-82).

Br. 69-75) that the membership clause cannot be analogized to a conspiracy statute and is therefore unconstitutional because it imputes guilt solely from association. However, in discussing the sufficiency of the evidence in the present case (G. Br. 36, n. 11), respondent stresses the fact that it is unnecessary, under the membership clause, "to prove that *the defendant* personally conspired to engage in the forbidden advocacy" (emphasis in the original). Thus, respondent acknowledges that the membership clause authorizes a conviction without proof that the accused conspired. Accordingly, as our principal brief argued, the statute cannot be sustained as a conspiracy law.

B. *Application.*

Respondent's contention (Br. 55-57) that the activities of petitioner and the Party "constituted a significant danger" within the limitations period is based on what we have shown to be a fallacious view of the evidence and inferences which have no foundation in the record. See Pet. Br. 65-66 and point 1, *supra*.

Respondent says (Br. 58) that petitioner had "the active purpose to help the Party achieve its unlawful objectives." But no issue concerning the nature of petitioner's activity in the Party was submitted to the jury. Respondent argues (*id.*, n. 17) that the "factor of 'activity'" as defined by it "was comprehended within the term 'membership' in the indictment and charge." This is an afterthought. There is no indication in the record that respondent's present interpretation of "membership" had even been conceived of by the prosecution or the court at the time of the trial, and the jurors could not possibly have been aware of it, even crediting them with the power of telepathy. Moreover, a jury finding that petitioner was "active" in the sense now defined by respondent would not support the conclusion that his activity was in furtherance of an unlawful Party objective. For respondent's "activity factor"

is satisfied by evidence of activity in furtherance of innocent Party objectives. See Pet. Br. 72-73.

Respondent contends (Br. 57-58) that petitioner's conviction may be sustained even though his activities "may seem insignificant." This is so, according to respondent, for the same reason that "the nation's commerce may be protected by dealing with individual instances which taken alone lack consequence." But, of course, the clear and present danger doctrine is inapplicable to regulations of commerce which do not impinge on First Amendment rights.¹⁰ Accordingly, the decisions to which respondent refers are wholly irrelevant to the issue here. Respondent's contention is a repetition of the thesis, advanced in its brief on reargument in *Scales* (p. 32), that the "danger" in this case is to be measured by the aggregate contributions made by all "active" Party members to the Party's alleged unlawful advocacy. We examined this thesis in our principal brief (pp. 62-64) and showed that it was fallacious. We also pointed out (p. 66) that there was no evidence of activity within the limitations period by any party member other than petitioner, and respondent can cite none. Accordingly, if petitioner's own activities were "insignificant," and respondent seems to concede that they were, the clear and present danger doctrine requires a reversal of his conviction. See Pet. Br. 57-62.

Our principal brief (pp. 66-69) urged that a reversal is also required because the tense international situation which was essential to the finding of a clear and present

¹⁰ Cf. *American Communications Association v. Douds*, 339 U.S. 382, involving a regulation of commerce that did impinge on First Amendment rights. *Douds* (at 402, 404) sustained section 9(h) of the Taft-Hartley Act only because, unlike the membership clause, it "does not prevent or punish by criminal sanctions . . . the affiliation with any organization . . . touches only a relative handful of persons, leaving the great majority of persons of the identified affiliations and beliefs completely free from restraint," and "leaves those few who are affected free to maintain their affiliations and beliefs subject only to possible loss of positions."

danger in *Dennis v. United States*, 341 U.S. 494 had ceased to exist at the time of petitioner's indictment. Respondent (Br. 58-59) characterizes this contention as "obviously without substance," apparently on the ground that it is sufficient for clear and present danger purposes that the touch and go nature of our relations with the Soviet Union found in *Dennis* (at 511) persisted into some portion of the limitations period. But, under the interpretation given the clear and present danger doctrine by *Dennis*, it is the nature of the external conditions in existence *at the time of the indictment* and not during a preceding period which is determinative. Judge Hand so stated,¹¹ and his conclusion is inherent in the *Dennis* formulation of the doctrine.

Dennis did not hold that the then "inflammable nature of world conditions" created a *present* danger of an attempt at forcible overthrow. It found, as a probability, that these conditions would lead to a war crisis which, in turn, would provide the occasion for an attempt at forcible overthrow. As Judge (now Justice) Harlan put it, Judge Hand's finding on external conditions was based "on a combination of factors from which he estimated the probability of some crisis or extreme tension which might present the awaited opportunity." *United States v. Flynn*, 216 F. 2d 354, 367. *Dennis* held that this estimated probability was sufficient to satisfy the clear and present danger doctrine.¹²

However, at the time of petitioner's indictment late in 1954, the absence of any "active battlefield anywhere in the world" and "other developments favorable to the maintenance of peace"¹³ made the war crisis which *Dennis*

¹¹ " . . . the question is how imminent: that is how probable of execution [the conspiracy] was in the summer of 1948, when the indictment was found." 181 F. 2d 201, 213.

¹² This reformulation of the doctrine was sharply criticized by both the concurring and dissenting Justices. See *Dennis v. United States*, *supra*, at 551, 570, 580, 585.

¹³ Statement by President Eisenhower in October, 1954. See Pet. Br. 67.

predicted improbable of occurrence. The estimate on which *Dennis* predicated its clear and present danger finding had been proved by events to be incorrect. Accordingly, no constitutionally requisite danger, even in the *Dennis* sense of "clear and probable," existed at the time of petitioner's indictment.¹⁴ Moreover, the wisdom of hindsight made it evident that no such danger had ever existed.

Nevertheless, respondent argues that the conviction may be sustained because the world conditions on which *Dennis* had based its prediction continued unchanged during a portion of the limitations period. But that fact became irrelevant, once developments prior to the return of the indictment demonstrated that the prediction was unsound. Certainly, the Court will not give greater deference to its own prophecies than to those of Congress. And, as *Chastleton Corporation v. Sinclair*, 264 U.S. 543, 547, stated with reference to the Congressional declaration of emergency involved in that case:

"We repeat what was said in *Block v. Hirsh*, 256 U.S. 135, 154, as to the respect due to a declaration of this kind by the legislature so far as it relates to present facts. But even as to them a Court is not at liberty to shut its eyes to an obvious mistake, when the validity of the law depends upon the truth of what is declared. . . . And still more obviously so far as this declaration looks to the future it can be no more than prophecy and is liable to be controlled by events."

Respectfully submitted,

JOHN J. ABT,

320 Broadway,

New York 7, N. Y.,

Attorney for Petitioner.

¹⁴ This was not the case in *United States v. Flynn*, *supra*, cited by respondent (Br. 59) where the indictment was returned in 1951 during the pendency of the war in Korea.

SUPREME COURT OF THE UNITED STATES

NO. 9.—OCTOBER TERM, 1960.

John Francis Noto, Petitioner,

v. o

United States.

On Writ of Certiorari
to the United States
Court of Appeals for
the Second Circuit.

[June 5, 1961.]

MR. JUSTICE HARLAN delivered the opinion of the Court.

This case, like *Scales v. United States*, No. 1, *ante*, p. —, was brought here to test the validity of a prosecution under the membership clause of the Smith Act. — U. S. —. The case comes to us from the Court of Appeals for the Second Circuit which affirmed petitioner's conviction in the District Court for the Western District of New York, after a jury trial. 262 F. 2d 501.

The only one of petitioner's points we need consider is his attack on the sufficiency of the evidence, since his statutory and constitutional challenges to the conviction are disposed of by our opinion in *Scales*; and consideration of his other contentions is rendered unnecessary by the view we take of his evidentiary challenge.

In considering that challenge we start from the premise that Smith Act offenses require rigorous standards of proof. *Scales*, *ante*, p. —. We find that the record in this case, which was tried before our opinion issued in *Yates v. United States*, 354 U. S. 298, bears much of the infirmity that we found in the *Yates* record, and requires us to conclude that the evidence of illegal Party advocacy was insufficient to support this conviction.

A large part of the evidence adduced by the Government on that issue came from the witness Lautner, and the reading of copious excerpts from the "communist

classics." This evidence, to be sure, plentifully shows the Party's teaching of abstract doctrine that revolution is an inevitable product of the "proletarian" effort to achieve communism in a capitalist society, but testimony as to happenings which might have lent that evidence to an inference of "advocacy of action" to accomplish that end during the period of the indictment, 1946-1954, or itself supported such an inference, is sparse indeed. Moreover, such testimony as there is of that nature was not broadly based, but was limited almost exclusively to Party doings in western New York, more especially in the cities of Rochester and Buffalo, the scene of petitioner's principal Party activities. Further, the showing of illegal Party advocacy lacked the compelling quality which in *Scales, ante*, p. —, was supplied by the petitioner's own utterances and systematic course of conduct as a high Party official. We proceed to a summary of this testimony.

The witness Dietch described mainly episodes from his indoctrination as a member of the Rochester Young Communist League during the years 1935-1938. In that time he knew petitioner, with whom he had gone to high school, and testified that petitioner, then a youth, was an active and convinced member of the League. Apart from those early years, Dietch's testimony as to the Party and the petitioner referred to one other possibly relevant episode, when, in 1951, he obtained for the Party at petitioner's request two pieces of special printing equipment for which petitioner paid \$100 and \$200. However, this episode is deprived of significance when it appears from the witness' testimony that petitioner explained to him at the time that pressure brought to bear on the Party had made it difficult for it to get its printing done by conventional commercial means.

The witness Geraldine Hicks had joined the Party in 1943 at the request of the F. B. I. and continued to be involved with it until 1953. She knew petitioner in con-

nection with his work as Chairman of the Erie County Communist Party from 1946 until 1950. Her testimony related to classes and meetings which she attended in the Buffalo area, where the "communist classics" were used for teaching purposes. Extensive passages from these works were read into evidence. She also testified as to the importance attributed by the local Party to its "industrial concentration" work and to its recruitment of workers in those industries as well as to the importance attributed to the recruitment of Negroes.

The witness Chatley, who was a bus driver during the period of his Communist Party membership from 1949 onwards, testified to his contacts with petitioner and other Party members in the Buffalo area. He testified to Party teachings as to the importance of receiving solid support from the labor unions. He was given various items of literature such as the History of the Russian Revolution and The Proletarian Revolution and the Renegade Kautsky, which latter dealt with an early Communist who had been singled out for condemnation because of his views that communism could be achieved ultimately by peaceful means. He was told by petitioner that "if I would reread the book[s], most of my questions would be answered. He said if there were any points I did not understand he would be happy to clear them up at a later visit." Perhaps the most significant item of Chatley's testimony dealt with an interview with petitioner, at which Chatley was requested to hide out a Party member who was fleeing the F. B. I. in connection with "what the newspapers called this Atom Spy Ring business." So far as the record reveals, the plans never progressed beyond this request. The petitioner had also told Chatley that the Federal Government was building concentration camps:

"... He said that they are not building them for ornamental purposes. He said 'They are going to fill

them with our people, starting with the leaders.' . . . He said that he expected that when they were ready he would be one of the first people to go. He said the Federal Government would continue with these camps and fill them with a lot of people, but the time would come when there would be a show-down, working people will stand just so much. It might take several years, it will result in bad times, but in the end it will result in a turn in the country to Marxism and Leninism. He said then his part might be in it, he was willing to suffer anything to bring it to that glorious end."

Certainly the most damaging testimony came from the witness Regan, who as a government agent and Party member from 1947 in the Buffalo-Rochester area gathered considerable information on the Party's "industrial concentration" program in that area. Regan, at the request of petitioner, attended a Party meeting in New York City on creating a Party commission in the United Auto Workers. The conference concerned the penetration of the United Auto Workers, and plans were made for getting people into various shops in automobile plants in the State, who could later assume positions of leadership in the union. At a later date petitioner also discussed the penetration of an automobile plant in the area by Party members sent up from New York City. Regan also received a pamphlet, but not from the petitioner, dealing with the concentration program in the steel industry. The pamphlet stated at one point:

"1. Three basic industries, steel, railroad and mining. These are basis [sic] to the National Economy, that is if any one or all three are shut down by strike our economy is paralyzed. It is necessary for a Marxist revolutionary party to be rooted in these industries."

In 1949 Regan attended a conference in Rochester at which the petitioner spoke: "He discussed concentration work, and he said the task of the Party was to build the Party within the shop in Buffalo . . . he specifically mentioned both steel and Westinghouse electric." Another speaker said that "steel was a basic industry, by basic he said the entire section of industry within the country depended on steel." Regan also attended a conference in New York City at which petitioner spoke:

" . . . He said a Lenin method of work within the shop was to decide upon the particular dependent within the shop, that the shop as a rule depended upon, to suspend production, it was the job of every communist to know the people, executives and product of the company, if possible to direct his attention on the key department, better still to get a job in the key department."

Several other passages in Regan's testimony should be adverted to for their bearing on the tone of the record before us. Speaking of the war in Korea, Regan testified that the petitioner had said at the conference of the Upstate District of the Party in 1950:

" . . . the war . . . was caused by an aggressive action of the United States, American troops would follow Wall Street policy. He said it is possible for this to break out in other parts of the world. He mentioned the Near East.

"Q. Is that all?

"A. Yes."

No effort was made to link up this conference with particularly trusted Party members, but it does appear that it was at this conference that plans were laid for building a Communist Party club "on the railroad."

Regan also testified to a remark made at another Party conference by a lecturer that a "social democrat was an evolutionist who waited for socialism where the Communist Party would achieve socialism through revolutions." At this same meeting the lecturer recounted an incident that had occurred at a class she had once taught in New Rochelle, New York, at an unspecified time:

"... She said a person at this class, they were discussing the Soviet Union, asked her if it would be possible for him to own twenty pairs of shoes in the Soviet Union. She made the statement he was the kind of guy they hoped to shoot some day."

The witness recalled a similar intemperate remark by the petitioner, during a meeting in 1947:

"Lumpkin [a Party member] was talking about a visit to his home by a local newspaper reporter. He said the reporter came to his home. They let him in and answered a lot of questions. . . .

"John Noto said Lumpkin should never let the reporter into his house. Should not have answered any questions. He said "Sometime I will see the time we can stand a person like this S. O. B. against the wall and shoot him."

The witness Greenberg testified largely about the Party program in the upstate area as to setting up printing and mimeographing equipment in case commercial channels were cut off or the Party was forced underground; and three other witnesses testified briefly to the effect that they had known petitioner when he had moved to Newark, New Jersey, and obtained a job under an assumed name as a helper or stockkeeper in the Goodyear Rubber Products Corporation factory, in connection with which he used a false Social Security number.

Finally, there was testimony through the witness Lautner as to the Party's underground organization in

northern New York, including petitioner's participation therein as one of the three Party members in charge.

We must consider this evidence in the light most favorable to the Government to see whether it would support the conclusion that the Party engaged in the advocacy "not of . . . mere abstract doctrine of forcible overthrow, but of action to that end, by the use of language reasonably and ordinarily calculated to incite persons to . . . action" immediately or in the future. *Yates v. United States, supra*, at 315-316. In that case we said:

" . . . The essence of the Dennis holding was that indoctrination of a group in preparation for future violent action, as well as exhortation to immediate action, by advocacy found to be directed to 'action for the accomplishment' of violent overthrow, to violence as a 'rule or principle of action' and employing 'language of incitement' . . . is not constitutionally protected This is quite a different thing from the view of the District Court here that mere doctrinal justification of forcible overthrow, if engaged in with intent to accomplish overthrow, is punishable *per se* under the Smith Act. That sort of advocacy, even though uttered with the hope that it may ultimately lead to violent revolution, is too remote from concrete action to be regarded as the kind of indoctrination preparatory to action which was condemned in *Dennis*. As one of the concurring opinions in *Dennis* put it: 'Throughout our decisions there has recurred a distinction between the statement of an idea which may prompt its hearers to take unlawful action, and advocacy that such action be taken.' " *Id.*, at 321-322.

The great bulk of the evidence in this record seems to us to come within the purview of the first of the contrasted

alternatives elaborated in the concurring opinion in *Dennis*, 341 U. S., at 545, and referred to in the passage just quoted. We held in *Yates*, and we reiterate now, that the mere abstract teaching of Communist theory, including the teaching of the moral propriety or even moral necessity for a resort to force and violence is not the same as preparing a group for violent action and steeling it to such action. There must be some substantial direct or circumstantial evidence of a call to violence now or in the future which is both sufficiently strong and sufficiently pervasive to lend color to the otherwise ambiguous theoretical material regarding Communist Party teaching, and to justify the inference that such a call to violence may fairly be imputed to the Party as a whole, and not merely to some narrow segment of it.

Surely the off-hand remarks that certain individuals hostile to the Party would one day be shot cannot demonstrate more than the venomous or spiteful attitude of the Party towards its enemies, and might indicate what could be expected from the Party if it should ever succeed to power. The "industrial concentration" program, as to which the witness Regan testified in some detail, does indeed come closer to the kind of concrete and particular program on which a criminal conviction in this sort of case must be based. But in examining that evidence it appears to us that, in the context of this record, this too fails to establish that the Communist Party was an organization which presently advocated violent overthrow of the Government now or in the future, for that is what must be proven. The most that can be said is that the evidence as to that program might justify an inference that the leadership of the Party was preparing the way for a situation in which future acts of sabotage might be facilitated, but there is no evidence that such acts of sabotage were presently advocated; and it is *present* advocacy, and not an intent to advocate in the future or a conspiracy to advo-

cate in the future once a groundwork had been laid, which is an element of the crime under the membership clause. To permit an inference of present advocacy from evidence showing at best only a purpose or conspiracy to advocate in the future would be to allow the jury to blur the lines of distinction between the various offenses punishable under the Smith Act.

The kind of evidence which we found in *Scales* sufficient to support the jury's verdict of present illegal Party advocacy is lacking here in any adequately substantial degree. It need hardly be said that it is upon the particular evidence in a particular record that a particular defendant must be judged, and not upon the evidence in some other record or upon what may be supposed to be the tenets of the Communist Party. See *Yates, supra*, at 330.

Although our conclusion renders unnecessary consideration of the evidence as to petitioner's personal criminal purpose to bring about the overthrow of the Government by force and violence, a further word may be desirable. While evidence of the industrial concentration program, in which petitioner was active, does not alone justify an inference of the Party's present advocacy of violent overthrow, it may very well tend to show the quite different element of the petitioner's own purpose. Even though it is not enough to sustain a conviction that the Party has engaged in "mere doctrinal justification of forcible overthrow . . . [even] with intent to accomplish overthrow," *Yates, supra*, at 321, it would seem that such a showing might be of weight in meeting the requirement that the particular defendant in a membership clause prosecution had the requisite criminal intent. But it should also be said that this element of the membership crime, like its others, must be judged *strictissimi juris*, for otherwise there is a danger that one in sympathy with the legitimate aims of such an organization, but not specifically intending to accomplish them by resort to violence, might be

punished for his adherence to lawful and constitutionally protected purposes, because of other and unprotected purposes which he does not necessarily share.

In view of our conclusion as to the insufficiency of the evidence as to illegal Party advocacy, the judgment of the Court of Appeals must be

Reversed.

MR. JUSTICE BRENNAN and THE CHIEF JUSTICE would remand to the District Court with direction to that court to dismiss the indictment. For the reasons expressed in MR. JUSTICE BRENNAN's dissent in *Scales v. United States*, ante, p. —, they believe that this prosecution was barred by § 4 (f) of the Internal Security Act. They also believe that the dismissal is required because of the insufficiency of the evidence.

SUPREME COURT OF THE UNITED STATES

No. 9.—OCTOBER TERM, 1960.

Jonn Francis Noto, Petitioner,

v.

United States.

On Writ of Certiorari
to the United States
Court of Appeals for
the Second Circuit.

[June 5, 1961.]

MR. JUSTICE BLACK, concurring.

In 1799, the English Parliament passed a law outlawing certain named societies on the ground that they were engaged in "a traitorous Conspiracy . . . in conjunction with the Persons from Time to Time exercising the Powers of Government in *France* . . . O." ¹ One of the many strong arguments made by those who opposed the enactment of this law was stated by a member of that body, Mr. Tierney:

"The remedy proposed goes to the putting an end to all these societies together. I object to the system, of which this is only a branch; for the right hon. gentleman has told us he intends to propose laws from time to time upon this subject, as cases may arise to require them. I say these attempts lead to consequences of the most horrible kind. I see that government are acting thus. Those whom they cannot prove to be guilty, they will punish for their suspicion. To support this system, we must have a swarm of spies and informers. They are the very pillars of such a system of government." ²

¹ 39 George III, c. 79. For a more complete discussion of the provisions of this law and the arguments surrounding its enactment, see my dissenting opinion in *Communist Party v. Subversive Activities Control Board*, decided today, *ante.* —, at —.

² See Parliamentary Debates, Hansard, 1st Series, 34, at 991. Cf. *De Jonge v. Oregon*, 299 U. S. 353, 365: "The greater the importance

The decision in this case, in my judgment, dramatically illustrates the continuing vitality of this observation.

The conviction of the petitioner here is being reversed because the Government has failed to produce evidence the Court believes sufficient to prove that the Communist Party presently advocates the overthrow of the Government by force. The Government is being told, in effect, that if it wishes to get convictions under the Smith Act, it must maintain a permanent staff of informers who are prepared to give up-to-date information with respect to the present policies of the Communist Party. Given the fact that such prosecutions are to be permitted at all, I do not disagree with the wisdom of the Court's decision to compel the Government to come forward with evidence to prove its charges in each particular case. But I think that it is also important to realize the overriding pre-eminence that such a system of laws gives to the perpetuation and encouragement of the practice of informing—a practice which, I think it is fair to say, has not always been considered the sort of system to which a wise government would entrust the security of a Nation. I have always thought, as I still do think, that this Government was built upon a foundation strong enough to assure its endurance without resort to practices which most of us think of as being associated only with totalitarian governments.

of safeguarding the community from incitements to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press and free assembly in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government.

I cannot join an opinion which implies that the existence of liberty is dependent upon the efficiency of the Government's informers. I prefer to rest my concurrence in the judgment reversing petitioner's conviction on what I regard as the more solid ground that the First Amendment forbids the Government to abridge the rights of freedom of speech, press and assembly.

SUPREME COURT OF THE UNITED STATES

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[June 5, 1961.]

MR. JUSTICE DOUGLAS, concurring.

The utterances, attitudes, and associations in this case, like those in *Seales v. United States*, *ante*, p. —, are in my view wholly protected by the First Amendment and not subject to inquiry, examination, or prosecution by the Federal Government.

For that reason, as well as for the one mentioned by MR. JUSTICE BRENNAN, I would remand the case to the District Court with directions to dismiss the indictment.